Board of Behavioral Sciences

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MEETING NOTICE

Policy and Advocacy Committee
April 10, 2009

Dept of General Services
The Ziggurat Building
77 Third Street, Suite #320,
West Sacramento, CA 95605

9:30 a.m. – 3:30 p.m.

I. Introductions

II. Review and Approval of the January 16, 2009 Policy and Advocacy Committee Meeting Minutes

III. Discussion and Possible Action Regarding Pending Legislation Including:
- A. Assembly Bill 244 (Beall)
- B. Assembly Bill 484 (Eng)
- C. Senate Bill 612 (Beall)
- D. Assembly Bill 681 (Hernandez)
- E. Assembly Bill 1113 (Lowenthal)
- F. Assembly Bill 1310 (Hernandez)
- G. Senate Bill 43 (Alquist)
- H. Senate Bill 296 (Lowenthal)
- I. Senate Bill 389 (Negrete McLeod)
- J. Senate Bill 543 (Leno)
- K. Senate Bill 638(Negrete McLeod)
- L. Senate Bill 707 (DeSaulnier)
- M. Senate Bill 788 (Wyland)

IV. Discussion and Possible Legislative or Rulemaking Action Regarding the Definition of "Private Practice" for Marriage and Family Therapist Interns and Trainees

V. Discussion and Possible Legislative or Rulemaking Action Regarding Supervised Experience Requirements for Marriage and Family Therapists

VI. Discussion and Possible Legislative or Rulemaking Action Regarding Experience Requirements for Licensed Clinical Social Workers

VII. Budget Update

VIII. Legislative Update

IX. Rulemaking Update

Arnold Schwarzenegger
Governor

State of California

State and Consumer Services Agency

Department of Consumer Affairs

X. Suggestions for Future Agenda Items

XI. Public Comment for Items Not on the Agenda

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Christina Kitamura at the Board of Behavioral Sciences, 1625 N. Market Boulevard, Suite S-200, Sacramento, CA 95834, or by phone at 916-574-7835, no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 574-7830.

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Arnold Schwarzenegger, *Governor*
State of California
State and Consumer Services Agency
Department of Consumer Affairs

POLICY AND ADVOCACY MEETING MINUTES - *DRAFT*
January 16, 2009

Waterfront Hotel
Jack London Square
10 Washington Street
Oakland, CA 94607
9:30 a.m. – 3:30 p.m.

Members Present	Staff Present
Gordonna DiGiorgio, Chair, Public Member	Paul Riches, Executive Officer
Renee Lonner, LCSW Member	Tracy Rhine, Legislation Analyst
Karen Roye, Public Member	Sean O'Connor, Outreach Coordinator
Dr. Ian Russ, Chair, MFT Member	Kristy Schieldge, Legal Counsel
	Christina Kitamura, Administrative Assistant
Members Absent	**Guest List**
None	On file

Gordonna DiGiorgio, Committee Chair, called the meeting to order at 9:30 a.m. Paul Riches called roll, and a quorum was established.

I. Introductions

Audience members introduced themselves.

II. Review and Approval of the October 10, 2008 Policy and Advocacy Committee Meeting Minutes

Ian Russ moved to accept the October 10, 2008 Policy and Advocacy Committee Meeting Minutes. Renee Lonner seconded. The Committee voted (4-0) to pass the motion.

III. Budget Update

Mr. Riches reported on the status of both the Board's budget and the funds received through the Mental Health Services Act (MHSA) for fiscal year 2008-2009. Mr. Riches indicated that both funds reflected balances at the present time, although it was anticipated that those balances would be significantly reduced by the end of the budget year due to initiatives that are in the works but not yet reflected in the budget estimates.

He reported that due to the hiring freeze associated with the state's budget problems, the Board had been unable to fill vacant staff positions which resulted in reduced expenditures in the areas of salaries, wages and benefits. Mr. Riches noted that Board staff has been working quite a bit of

overtime to address some backlogs in operations, and progress has been made in reducing those backlogs. He indicated that the numbers on the reports presented to the Board were a little high as a result of the department's accounting system being about a month behind, but that the Board was currently very comfortably within its budget.

Mr. Riches then provided information about the state's budget and how the deficit in the General Fund impacts the Board. He noted that the State Controller was meeting to determine priorities in state spending given the cash shortage the state is currently facing. Mr. Riches indicated that at the present time it is difficult to know what is going to happen, or how the Board will be impacted by the state's financial difficulties.

Karen Roye asked if the Board would be impacted by "bumping." She explained that "bumping" pertains to employees whose position may be cut due to funding shortages, and who then have the right to "bump" another employee in a similar classification because one employee has more seniority than the other. She asked if the Board would be impacted by this process. Mr. Riches spoke about mandatory reinstatement rights and how this works within the civil service process. He indicated that the lay-off process within state service is a very complex and difficult process. He indicated that the Board would not be subject to layoffs, in that the pertinent Governor's Order exempted special fund agencies, which includes the Board of Behavioral Sciences, from layoffs.

Ms. Roye then asked about the impact of the financial situation on the Board's contracts, specifically, would anything be slowed down or delayed by the state's current budget and financial difficulties. Mr. Riches indicated there were three areas in which the Board is most vulnerable: 1) potential exposure exists in areas of examinations, as this is a critical function of the Board and is very costly; 2) court reporters are considered personal service contractors, and will potentially be subject to the same registered warrant treatment as all other similar contractors; and 3) reimbursement of SMEs. However, at the present time nothing is certain.

Mr. Riches indicated that at the February Board Meeting recommendations would be presented regarding adaptations the Board will need to make to work through the financial situation.

Ian Russ encouraged the Committee to show support to Board staff for their ongoing efforts during the budget crisis. The Committee discussed briefly different ways in which they could do so.

Janlee Wong, National Association of Associate Social Workers (NASW), raised the issue of possible exemptions to the furlough policy based on the premise that any delays in processing of complaints or enforcement cases could result in an impact on public safety. He also spoke about how examination candidates could be impacted by the current financial situation if the examination contractor was unwilling to continue providing services and the candidates could not test within the timeframes required by law. Mr. Riches offered his assurance that candidates would be held harmless if testing had to be halted due to any inability to pay the test contractor.

Mr. Riches then discussed the issue of the Governor's Executive Order S-16-08, specifically with respect to furloughs and layoffs. He stated that the Board is excluded from the layoff order at the present time. However, the Board is included in the requirement that staff be furloughed two days per month. Subsequent to the Governor's order, the Department of Personnel Administration (DPA) issued an advice that state offices would be closed the first and third fridays of every month for the length of the order (February 1, 2009 through June 30, 2010). Mr. Riches indicated this means, in practical terms, the loss of two work days per month and a 10% reduction in pay for staff. He added that at the February meeting recommendations would be presented about dealing with

the situation, and hopefully there would be a better understanding of what the operational impact of the work reduction would be.

The Committee expressed the willingness to write a letter of displeasure or take steps, if or when appropriate, to convey their concerns about how the crisis was being addressed.

Mr. Riches then went on to report about the next budget year. He indicated that the Board has received approval for two budget change proposals to increase staffing and resources in the next fiscal year. One was to increase the line item for services provided by the Attorney General's office in pursuing the Board's disciplinary cases. The other approved proposal pertains to retroactive fingerprinting of licensees. The budget for next year included four new positions as well as additional money for the Attorney General's office, Office of Administrative Hearings, and funding required to implement the fingerprinting project. Two of the four positions are permanent; two positions are limited-term.

The last issue addressed by Mr. Riches was the proposed creation of the Board of Mental Health which would be composed of the Board of Behavioral Sciences, the Board of Psychology, and the Psychiatric Technician program currently housed at the Board of Vocational Nurse and Psychiatric Technicians. He discussed the various challenges to accomplishing such a task. The Boards themselves are currently physically located in three different locations. Additionally, the work done by the one of the professions included in this proposal differs significantly from the other included professions.

From a practical standpoint, what the merger would mean is that the three boards that currently exist would cease to exist, including board members and executive officers, and a new board comes into being. A new executive officer is selected and the board starts from scratch.

Ms. DiGiorgio asked if the proposed change was supposed to result in a cost savings. Mr. Riches indicated the change was supposed to achieve efficiency; however, the logistics involved in merging five distinctly different professions would definitely be challenging.

Discussion of the subject continued regarding the topic. Mr. Riches reported there was a stakeholder's meeting scheduled January 21, 2009 to discuss the matter, and indicated he had already been asked for and provided his assessment of the proposal. Dr. Russ added that earlier this month he participated in a telephone call with other boards and bureaus, coordinated by the Department of Consumer Affairs, at which time the participants were informed about the proposed merger, without discussion. Dr. Russ indicated that at that time they were afforded the opportunity to provide individual feedback to the department. Board members from the other boards expressed concern about the manner in which the proposal was raised without prior input from those entities impacted by the proposal.

Geri Esposito, California Society of Clinical Social Work (CSCSW), asked if the origin of the boards and bureaus was statutory, which Mr. Riches confirmed was the case. Ms. Esposito asked if then any change such as the proposal being discussed would require changes to existing statute, which again Mr. Riches confirmed. Ms. Esposito pointed out that then there was opportunity to use lobbyists or other avenues to express concerns and provide input.

Mr. Wong, NASW, asked if there had been any estimates of potential cost savings in merging the boards/bureaus as noted. Mr. Wong also asked about projected delays in critical functions such as enforcement, complaint processing and consumer protection. Mr. Riches indicated that no such numbers had been presented at this time. He noted that the material savings would essentially be

from elimination of executive officer positions, and the salaries and benefits associated with those positions. He also noted that there could be a minor savings with respect to incidental board costs. Overall, however, the proposed merger would not result in a savings to the state.

Dr. Russ stated his belief that the Board does a "stupendous" job, and outlined areas in which the Board has made accomplishments and taken steps to meet established goals. He expressed personal pride in being associated with the Board and its activities.

Mr. Riches noted that a practical consequence of the present discussion pertains to the need to adjust the Board and Committee meeting schedules to accommodate anticipated furlough days, which at the present time are the first and third Fridays of the month. He indicated that the meeting previously scheduled February 18-19, 2009 in San Luis Obispo was being moved to February 26-27, 2009 in Sacramento. He apologized for the late notice of this change, and indicated his understanding of what is involved in adjusting schedules to be able to attend the Board's meetings. Mr. Riches noted the likelihood that the May Board meeting would have to be rescheduled as well, and indicated that information would be provided about any changes as soon as available.

The Committee adjourned for a short break.

IV. Discussion and Possible Action Regarding Proposed Statutory Changes Related to Supervision by Videoconference

r. Riches reported that last year the Board approved sponsoring legislation to allow video supervision of interns and associates on a limited basis (up to 30 hours of supervision). The provision was included in legislation last year that was vetoed due to the budget impasse. The legislation will be reintroduced this year. He indicated that recently requests have been received from several different sources to reconsider the proposal to increase the total number of supervision hours that will be allowed via two-way video conferencing. He stated that the matter was therefore being brought back to the Committee for additional discussion. Mr. Riches stated that the previously established limit was selected as a tentative first step in creating an opportunity for this type of supervision to occur, and had no particular foundation. He directed the Committee members to the information provided regarding this matter, which included the previously developed language amending current statute accordingly. Also provided was a copy of correspondence received from several mental health related agencies asking the Board to consider increasing the proposed 30 hour limitation. He stated that staff had found no issues with the proposal.

Mr. Riches stated that it has become increasingly common to use technology to address shortage areas, and is explicitly part of the Mental Health Services Act in terms of bringing resources to communities that are underserved for many reasons, including geography and economy. He expressed the awareness that the issue will be at hand for quite a while, and should be further discussed by the Committee. He noted that in the audience was Chad Costello, representing some of the organizations that had asked for the matter to be revisited with an eye toward increasing the number of allowable hours. Mr. Riches asked that the matter be opened for further discussion.

Ms. DiGiorgio asked if it would behoove the Committee to increase the number of hours of supervision to be allowed via this method. Mr. Riches reiterated that there has been no policy reason identified that would preclude allowing video supervision or increasing the allowable hours of such supervision.

Dr. Russ reported having sought research that would speak to what would be lost within the supervision process if technology were to be used, and could find none. He found information from other states about psychiatric treatment that is provided to rural areas via videoconferencing. He again stated that he could not find any evidence of more errors or any losses experienced by using technology in that manner. He speculated that the Board would find support for supervision by videoconference from most if not all of the agencies that comprise the MFT consortiums. He added that although there was not the same physical presence as having another person in the room, there is nonetheless a presence and the opportunity to interact and observe the other party's reactions and responses.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), stated that it was CAMFT that recommended that the Board consider offering some of the supervision in this manner. She reported feeling from the beginning of the discussion about this subject that the number of hours should be increased, and offered CAMFT's confidence and support in approving the increase suggested to the Board by the Mental Health Directors Association.

Ben Caldwell, American Association of Marriage and Family Therapy (AAMFT) California, added the agency's support for an increase of hours. He offered comments about different approaches the Board may want to take in determining what amount of videoconferencing would be appropriate.

Ms. Esposito expressed the belief that within the helping professions clinicians tend to feel a resistance to something like videoconferencing. She reported having attended several meetings on the state of videoconferencing in a medical context. She not only offered her support for allowing some if not all supervision through this method, she reported being unable to find any evidence-based reason why this change should not occur.

Mr. Wong commented that many people are not accustomed to using technology to share information or provide instruction or supervision, and therefore are not comfortable with the idea. The concept is that somehow if they cannot see or hear the person, they are then not speaking to a real person. He expressed support for Ms. Esposito's position on the subject, for Marriage and Family Therapists and Licensed Clinical Social Workers alike. Last, he stated that often, when the Board makes a change, some licensees look at the change from a "tell me what to do" perspective. He expressed the hope that the Board can find a way to initiate this change in a non-regulatory manner, and help to promote the idea of video supervision. Mr. Wong also touched on the issue of a supervisor's review of case notes as an important component to thorough supervision. He expressed concern that details be worked out as to how case notes would be provided to a supervisor engaged in video supervision, and noted unease with confidentiality and security issues surrounding the electronic transmission of case notes. Nonetheless, Mr. Wong summarized his comments by stating his support for the idea of unlimited supervision using videoconferencing technology.

Mr. Costello offered comments about the benefit of such supervision, and provided support for the concept on behalf of the agencies he represents.

Ms. Riemersma commented about the electronic transmission of case notes and files, and noted that it was probably a safer method of providing such documents to a supervisor than physically transporting those materials.

Dr. Russ broached the subject of supervision being provided by a California licensee who is not within the state at the time of video conference. Discussion then ensued about a supervisor who is

licensed in California but no longer living in the state, and whether it would remain appropriate for the supervisor to provide those services from another state.

Kristy Schieldge, Staff Counsel, responded that it would depend on the types of restrictions or requirements imposed by the state in which the supervisor was living, but according to California law it would not appear to be a problem. She stated she was unaware of any federal law prohibiting such activity. Mr. Riches added that the supervisor would be subject to the state licensing authority in the state in which he or she was living. He and Ms. Schieldge both noted that allowing video conferencing would not change any of the current California requirements regarding necessary qualifications for the supervisor.

Discussion continued, with the general consensus among the Committee members being that most, if not all, related entities would have no concern with allowing videoconferencing as a method of providing supervision.

The issue was raised regarding the appropriateness of allowing all supervision to be performed via videoconferencing, and the Board members shared their experiences and perspectives regarding the subject.

Mr. Caldwell commented about the mechanics of including video conferencing in the statute and regulation pertaining to supervision. He asked if it would work to include the permission to supervise via videoconferencing as an addendum to the current definition of supervision. Mr. Riches noted that current statute refers to face-to-face supervision. If the Board is going the direction of allowing either face-to-face or videoconferencing, a revision of the existing statutory language in this area would be necessary. It would be important to clarify that it is only face-to-face or videoconferencing that is permissible for supervision. Mr. Riches reminded the Committee members that they were not charged with making the final decision in this matter. They would be making a recommendation to the full Board at its next meeting, with specific statutory language available at that time, as well as the opportunity for further discussion among all Board members.

Ms. Roye voiced concerns with allowing all of supervision to be allowed via videoconferencing. She spoke from a managerial standpoint and expressed the belief that some type of meeting or interview should be conducted face-to-face with the supervisee in order to establish some type of bond or connection with that individual. She stated that videoconferencing does not allow for that type of connection.

Comments were made by meeting participants, sharing varying perspectives on the subject and acknowledging an understanding of Ms. Roye's concerns. Mr. Riches clarified that the possibility for videoconferencing would be an option only in an exempt setting, not in a private practice setting. He also noted that the model for supervision vests an enormous amount of discretion to the supervisor and their professional judgment. Mr. Riches expressed a strong confidence that even if a supervisor was to be afforded the option of conducting all supervision via videoconferencing, not many clinicians would be satisfied in providing all supervision via this method.

Ms. Riemersma commented that all parties involved in the process (employer, supervisor and supervisee) take supervision very seriously. The Board needs to empower the involved parties to determine what works for them in this area, and develop a plan that works best for them in the particular setting or situation in which they are involved. Ms. Riemersma expressed that putting limitations on how much supervision can be provided via videoconferencing would impose unnecessary restrictions. She added that if issues arise around allowing videoconferencing, the issues can be discussed and the statute or regulations modified as determined necessary.

Dr. Russ suggested that additional input be invited from the community regarding any losses know to be experienced with the absence of the human factor involved in face-to-face interaction, and if those losses were offset by the benefits of using videoconferencing.

Renee Lonner moved to recommend to the Board to allow unlimited use of videoconferencing in supervision. Ian Russ seconded. The Committee voted (3-1) to approve the motion.

V. Discussion and Possible Action Regarding Amending Unprofessional Conduct Statutes and Regulations

Tracy Rhine reported that currently in statute the licensing acts set forth conduct that may result in the Board's suspension or revocation of a license. These are known as the unprofessional conduct statutes. There are also sections of regulation, pertaining to each type of license regulated by the Board that define what is considered to be unprofessional conduct. Staff's concern in reviewing the various sections is the confusion in having so many relevant sections of law and regulation, and the inconsistencies uncovered in the various sections. Language was brought forth to the Committee to take provisions that are in regulation and put them in statute. The action would not change what is considered to be unprofessional conduct, but rather incorporates everything into statute. Ms. Rhine indicated that the idea is to have only one place that staff, consumers and licensees alike must look when researching the Board's definition of unprofessional conduct. If the move is approved, the various statutes would be revised accordingly and the regulation subsequently repealed.

Ms. Rhine indicated there were two issues to present for the Committee's discussion. She reviewed the specific changes applicable to both the Licensed Educational Psychologist (LEP) and Licensed Clinical Social Work (LCSW) statutes. Ms. Rhine placed emphasis on differences in the current statutory and regulatory language pertaining to LCSW practice, specifically with respect to gross negligence, and to the requirement that LCSW licensees limit access to psychological tests or other assessment devices to persons with a professional interest who will safeguard their use. She suggested that the Committee may want to discuss the merits of incorporating existing regulatory language into statute.

Ms. Lonner raised the subject of a licensee being disciplined if they provide records in compliance with a subpoena or court order. Ms. Schieldge suggested amending the proposed language to include language that would cover the licensee if the documents were provided as required by law. Ms. Schieldge reiterated that the proposals currently before the Committee were not to change existing requirements, but rather to incorporate regulatory language pertaining to unprofessional conduct with similar statutory language.

Mr. Wong asked the Board to give the issue more consideration. He expressed concern with amending the statute in the manner suggested by counsel, thereby creating loopholes in the statute. He referred to the current acceptability of a licensee refusing to comply with a subpoena if the licensee feels complying would be harmful to the client. Mr. Wong expressed the position that broadening statute in the manner proposed might be detracting from licensees' professional judgment.

Mr. Riches noted that when he was reviewing the matter at hand, he interpreted the language to refer to release of the test or assessment instrument itself. He wondered if the Committee

members were interpreting the language to refer to release of results or release of the actual instrument.

Ms. Lonner responded by describing steps she has taken upon receipt of a subpoena for records that included secondary records or records that came from someone else. She indicated she might call that clinician and asked if he or she wanted their records released along with hers, or did they want an original subpoena or court order issued for the secondary records. She clarified that complying with a subpoena could involve release of both the testing or assessment instrument and the results of such test or assessment.

Dr. Russ clarified the sections under discussion pertained to the release of the actual instrument, and likened it to requirements and restrictions pertaining to licensing test questions. He expressed the position that the language as proposed was sufficient.

Mr. Wong asked if this then was an anti-piracy provision. Dr. Russ agreed with that interpretation. Mr. Riches qualified it more as a test-integrity provision.

Ms. Schieldge asked if the proposal is to substitute the regulation for the statutory section as currently written, specifically with respect to the gross negligence provision. She expressed concern that the statute continue to include language pertaining to incompetence. She asked if the "performance of clinical social work" is the same as "an act or omission that falls below the standard of conduct of the profession…" Is this essentially the same thing, or is "an act or omission" broader than "gross negligence in the performance of clinical social work." Mr. Riches clarified that the issue is that statutory language and regulatory language are phrased differently in this instance, and is one phrasing better than the other or are they meaningfully different at all. Ms. Schieldge expressed the position that "an act or omission" could possibly be broader.

Mr. Wong again raised concern about adding language so specific as to warrant the need for a lengthy explanation about what was meant. Committee members agreed that broader, more encompassing language would be better. Discussion was then held about the need to retain language about incompetence, and possible wording that could be used to ensure that the statute addressed both incompetence and gross negligence.

Karen Roye moved to direct staff to prepare revised statutory language concerning gross negligence and incompetence and bring the revised language back to the full Board. Ian Russ seconded. The Committee voted unanimously (4-0) to approve the motion.

Mr. Riches reminded the Committee of the need to also make a motion regarding the other LCSW-related provision, as well as the provisions pertaining to LEPs.

Renee Lonner moved to recommend to the Board to sponsor legislation incorporating existing pertinent regulation into statute. Karen Roye seconded. The Committee voted unanimously (4-0) to approve the motion.

The Committee adjourned for lunch at approximately 12:06 p.m. and reconvened at approximately 1:15 p.m.

VI. Discussion and Possible Action Regarding Draft Regulations Implementing Mandatory Continuing Education for Licensed Educational Psychologists

Ms. Rhine provided a brief history about the ongoing discussion concerning implementation of continuing education (CE) for LEPs. She noted that as of January 1, 2008, statute has mandated completion of 36 units of CE, but to date the Board has not passed regulations to implement the CE requirement. The Policy and Advocacy Committee discussed the matter several times, and previously made recommendations to the Board regarding implementation of the statute. At its November 18, 2008 meeting, the Board directed staff to change the implementation provisions to allow for a staggered implementation of the CE requirements.

Language was presented to the Committee that provided specifics about the staggered implementation of this requirement. In summary, an LEP applying for license renewal between January 1, 2011 and December 31, 2011 would be required to complete at least eighteen (18) hours of CE prior to renewal of his or her license and, beginning January 1, 2012, requires that a licensee meet all CE requirements (the full 36 hours) for renewal of the license. Also included in the language is the provision that, for initial license renewal, an LEP has to complete only eighteen (18) hours of CE. This is consistent with the CE requirements for both MFTs and LCSWs.

The last provision in the proposal outlines specific coursework that the LEP must complete upon his or her first renewal after January 1, 2011. The matter has been discussed both by the Committee and the full Board, with the consensus being that the required coursework should be consistent with requirements pertaining to LCSWs and MFTs. Ms. Rhine noted the possibility that in order to complete all required coursework for initial license renewal, an LEP could face having to complete more than 40 hours of CE. She noted that given the various methods available for completion of the courses, many licensees will have already completed some of the required coursework. However, the potential exists for a licensee to have to complete more than forty (40) hours of CE for the first renewal after January 1, 2011.

Mr. Riches added that, in the Board's experience, most licensees have a significant portion of the required coursework addressed otherwise through education or other experience and can satisfy the requirement. Although candidates who have not met any of this requirement might need to complete over forty (40) hours of CE for their first renewal, this is no different from the expectations of MFTs or LCSWs with respect to continuing education.

Ms. Rhine indicated there were no issues regarding the proposed changes, but stated she has been working with Ms. Schieldge and had noted technical changes that are required. Ms. Schieldge specified those changes, which included removing reference to statute from section 1887.1(c)(1). Also, currently proposed language in section 1887.2(b) appears to refer to all licensees. Ms. Schieldge suggested adding language that specifies it is Licensed Educational Psychologists who are referenced in this section, i.e. "Beginning January 1, 2011 and through December 31, 2011 Licensed Educational Psychologists shall complete at least eighteen (18) hours of continuing education prior to his or her license renewal."

Mr. Wong asked for clarification regarding how it was determined that more than 40 hours of CE would be necessary to complete all required coursework. Mr. Riches explained that licenses renew at the end of the birth month, and that the length of the initial renewal period is contingent upon when the licensee first applied for initial licensure. As such, some licensees might have an initial license period that is shorter than other licensees. The first renewal period is seldom a full two years; the first full two-year renewal period occurs after the initial renewal of the license.

Mr. Wong then asked if the requirement would be applicable to existing licensees. Mr. Riches responded affirmatively, and clarified that it was a requirement of existing LEPs only. He added that in many instances the licensee is allowed to demonstrate compliance with the requirement via prior training. It can depend upon how the requirement is phrased. Mr. Wong then asked about the extent of the support from the LEP community for this proposal. Mr. Riches responded that that the LEP profession has been very supportive. Mr. Wong also expressed concern about the financial impact on licensees who might have to complete more than forty hours of CE for one renewal. Mr. Riches again stated that the requirement did not subject LEPs to any CE obligations that are different from the requirements of MFTs and LCSWs.

Ian Russ moved that the Committee recommend to the Board that the rulemaking process be initiated consistent with the proposed changes. Karen Roye seconded. The Committee voted unanimously (4-0) to approve the motion.

VII. Discussion and Possible Action of Requiring Minimum Hours of Experience Treating Families for Marriage and Family Therapist Licensure

Mr. Riches reported that the Committee began discussion of this issue at its meeting in October 2008. The discussion was about how the Board was going to address the issue of doing marital/conjoint family therapy as a unit and staff concerns that the structure of experience requirements for MFTs was becoming unmanageable. Mr. Riches noted that during the course of the MFT Education Committee deliberations it was brought up that a person can become licensed as an MFT without having done family therapy or therapy with more than one person in the room.

Based on the discussion in October, staff prepared a discussion draft of changes to MFT experience requirements. The document was provided to the Board in an effort to stimulate discussion and address issues raised previously regarding MFT experience requirements. Mr. Riches reviewed with the Board the proposed changes outlined in the memo. He then opened the matter for discussion.

Mr. Wong raised concern about allowing the double counting of hours spent providing family therapy. He asked, “What is a family member?”

Ms. Riemersma offered thoughts and suggestions about the various proposals outlined for the Board. She expressed confusion and concern about what is family therapy. She noted the philosophy that if you have one person in the room you are doing family therapy and, likewise, when you have more than one person in the room you still are doing family therapy. In working with a child you are, by nature of what you are doing, working with family issues. She expressed uncertainty that it can be broken down by the number of people who are in the room. She stated that she likes the idea of incentive, but at the same time has concerns about incentives when it is only the MFT profession because then it appears there is something wrong with the MFT profession that they have to be induced to obtain hours.

Mr. Wong offered another viewpoint which is that MFTs get a special benefit of being able to double count hours when LCSWs do not. Ms. Riemersma agreed that regardless which side you’re on, it does appear to be disparate treatment.

Ms. Riemersma then commented on the proposal to combine the number of hours of experience gained providing telephone crisis counseling and telemedicine. She expressed support for the idea of increasing the number of hours of experience earned in this area under supervision to 375, or the

total of the current number of hours allowed for both areas. Those hours could be earned via either telephone crisis counseling or telemedicine.

Ms. Riemersma was supportive of the proposal to allow candidates to collect hours for client centered advocacy. With respect to eliminating hours of experience earned by attending workshops, trainings and conferences, she encouraged the Board to leave this provision as is currently in statute. She expressed the position that allowing candidates to earn hours in this manner also serves to give them some experience in earning hours of continuing education as will be required once they become fully licensed. Ms. Riemersma recommended that the Board consider instead eliminating the hours required to be earned in psychotherapy, which she reported had been originally required as desired by a former legislator. She noted that the profession is sometimes criticized for allowing the earning of hours of experience via personal psychotherapy.

Ms. Riemersma offered thoughts on the remaining issues. She concluded by reiterating the suggestion that, if any hours needed to be eliminated, make it the hours of experience earned through personal psychotherapy.

Mr. Caldwell stated he supported the idea of double counting the first 150 hours providing family therapy. He definitely agreed that MFTs should see couples and families together. He stated that the proposal is a step in the right direction. With respect to defining what constitutes a family member when seeing two or more people at once, he noted that this is an issue that is faced by all AAMFT accredited programs, because those programs count relation hours differently from individual hours. Every AAMFT accredited program has some type of working definition of what constitutes a family member. Mr. Caldwell offered the language used by Alliant University for the Board's use in solving this problem.

Mr. Caldwell questioned the need for eliminating the hours of experience gained for attending workshops, trainings and conferences. He stated the position that it is good for the profession for people to engage in continuing education throughout their time as interns. He also questioned the need to change the statute pertaining to the supervision ratio for post-graduate experience. He expressed an uncertainty about the supervision ratio in other states, but was concerned that if those ratios are the same as in California, changing California's requirement could result in difficulty for individuals from California attempting to be licensed in another state. He expressed the intent to contact other states to obtain information about this topic.

Mr. Caldwell was confused about the proposal to require two hours of group supervision to be credited for one hour of supervisor contact and asked for clarification. He stated his initial understanding of the proposal is that two hours of experience would be credited for one hour of individual supervision. Mr. Riches clarified that it is the opposite. Currently, for the purpose of satisfying the supervision requirement, group supervision essentially is discounted. However, for the purpose of total experience required, it is not discounted whatsoever. Mr. Riches then provided a description or breakdown of the current requirement. Mr. Caldwell then clarified his new understanding of the proposal, which is that for experience purposes, two hours of group supervision would count as one hour of supervisor contact. Mr. Riches confirmed that is what is in the discussion draft. For satisfying the supervisor contact experience category, a two-hour group session would qualify for one hour of supervisor contact.

Discussion continued regarding the proposed changes. Mr. Riches indicated that it was understood that the existing process and requirements are complex. If the Board is moving toward trying to simplify things, the proposed changes are areas staff has identified as possible avenues to take toward meeting that goal. He then continued to explain the existing supervision ratio, and the

disparities currently in place between the MFT and LCSW professions with respect to supervision ratios.

Mr. Caldwell noted that if the changes were made as proposed it could result in a dramatic reduction in the apparent number of supervision hours that MFT interns earn in an effort to become licensed. Mr. Riches concurred, but expressed the need to keep in mind that the trainee requirements have not been altered in the proposed changes. He indicated that most candidates gain in the neighborhood of 600–700 hours as a trainee, and reminded meeting participants that the proposal regarding the supervision ratio pertained to post-graduate experience.

Dr. Russ asked if it was good for the profession to reduce the number of hours of supervision during training. Ms. Riemersma responded it was good and bad. It is good because supervision is a valuable learning experience, with more being better than less. On the other hand, consideration needs to be given to the employability of the profession, and an employer required to give more supervision is less inclined to hire an MFT and more inclined to hire an LCSW, when hiring someone to do the same job, because the costs are less. It is increasingly difficult to find supervisors, and to make supervision work. For many reasons, it is often a very difficult thing, and the more hours a person is able to see clients in a week means that much more supervision.

Ms. Riemersma again indicated she like the idea of the proposal, but was having trouble figuring out how the proposal will work.

Ms. Esposito commented that the profession is changing. With respect to the MFT profession, the placements for experience have changed greatly. She expressed that it makes more sense to be more consonant with the requirements of ASWs. The placements and workloads are more similar in public agencies that previously. There is a need to take a look at the evolution of the profession.

Mr. Wong reiterated the position that the discussion really was about what is marriage and family therapy and what is clinical social work. It was his understanding that the agencies voicing the complaints that in part resulted in the days discussion looked at the two professions as not being different. Mr. Riches clarified that what was being said is that the two professions perform comparable services, not that there is no difference. He asserted that the changes being seen in the professions were much more significant for MFTs than for LCSWs. If that is the case, why shouldn't the rules impacting the two professions be the same? He indicated that the question remains, are the professions the same? If they are not considered to be the same, then he encouraged the Board to be careful about making the requirements the same. He expressed the belief that it was a fundamental question the MFT profession needed to ask of itself.

Ms. Roye asked about the possibility of developing a briefing document to help demystify the process. Mr. Riches indicated there are many documents available intended to do that, but with limited success. He noted that the documents presented to the Committee, most significantly the experience calculators, provide a good overview of the differences in terms of category complexity.

Ms. Roye expressed the need to have a clearer understanding of the impact of the proposed changes on the educational process - what impact the changes would have on the quality of the supervision.

Ms. Riemersma commented she did not believe the changes would result in any adverse impact on the quality of the supervision provided. A change in the number of hours would not impact that quality. Ms. Riemersma stated that although marriage and family therapy and clinical social work are two separate professions, in many settings the candidates for licensure are asked to do the

same or very similar jobs, and the same supervisors are supervising candidates for both professions. Therefore, paralleling the supervision requirements for both professions more closely will result in the supervisor being able to focus more closely on the supervision and less on the rules.

Mr. Riches added that the proposed change regarding supervision would simplify the process and possibly shorten the path to licensure.

Ms. Schieldge explained there would be less group hours required to qualify for the supervisor ratio.

Mr. Riches stated a candidate would still be required to complete 3,000 hours of supervised experience.

Discussion continued among Committee and audience members.

Ms. Esposito provided a brief history of the supervision hours required of associate social workers. She indicated that at one time the supervision prepared the candidate for more than agency work, but rather prepared them to work in settings from clinical family services agencies where therapy was provided to private practice. She expressed concern about viewing the hours of experience required of social workers as being due to the candidates not having to provide psychotherapy. She reiterated that was not the history of the clinical social work license; rather, it was a more broad-based field of practice.

Discussion then continued about the history of the two professions. Participants discussed why the requirements were different for the MFT and LCSW professions, the consensus being that it was due to the professions having evolved differently. The members also discussed how the professions were growing to be more similar, and the steps that might be taken to adjust to that evolution while respecting the history and traditions and differences in each profession.

Mr. Riches referred the Committee members back to the discussion draft and asked for guidance as to what the members wanted to discuss at the next meeting. Dr. Russ recommended that discussion continue about double counting the first 150 hours providing family therapy. He also agreed with combining the hours of telephone crisis counseling and telemedicine, for a total of 375 hours. He supported allowing candidates to collect hours for client-centered advocacy. He suggested dropping the issue of workshops, etc. Lastly, Dr. Russ recommended continuing the move to make the supervision ratio requirements for the MFT and LCSW professions more in line with each other. The group agreed with pursuing the requirement that two hours of group supervision be credited for one hour of supervisor contact, and allowing hours of experience to be gained in any category as a trainee. The group also agreed it was important to continue requiring candidates to participate in personal psychotherapy.

Mr. Riches stated the group would be presented with another draft for discussion at its April meeting.

VIII. Legislative Update

Ms. Rhine provided an update regarding various board-sponsored legislation.

She reported that SB 33 (Correa) is the reintroduced legislation pertaining to MFT Educational Requirements. A similar bill introduced during the last legislative session was vetoed.

Additionally, two Omnibus bills sponsored by many of the Department of Consumer Affairs licensing boards. One bill is the reintroduction of a similar bill that was vetoed in the previous legislative session (SB 1779). The second bill includes provisions concerning issues discussed by the Board at its previous meeting. She noted that a question had been raised by an audience member about one provision in the second omnibus bill, specifically the issue pertaining to ASW employment in a private practice.

Ms. Esposito asked for the rationale behind this provision. Mr. Riches explained that this again had to do with requests from supervisors. The current law for MFT interns states that if they need to obtain a second intern registration, they are no longer allowed to work in a private practice setting.

Ms. Riemersma provided a history of the restriction. She explained that at one time people could work in private practice in perpetuity without ever becoming licensed, and private practice was intended for fully licensed individuals. In the early days, the only reason a person would register as an intern is to work in private practice. The requirement about subsequent registrations was put in place to limit the length of time an unlicensed individual could work in private practice.

Ms. Esposito then expressed her disagreement with putting such a requirement for ASWs into law at the present time. She explained that frequently there are people who due to various life or geographical circumstances have a registration that expired after its six-year life and are required to re-register in order to complete hours of experience. She is concerned that imposing the restriction resulting from this change could limit a candidate's ability to gain experience in today's environment. Mr. Wong voiced agreement with Ms. Esposito, and revisited the issue of differences in the MFT and LCSW professions. Dr. Russ added his perspective on this issue. Mr. Riches added that it was a fairly small group of people who would be impacted by this change.

IX. Rulemaking Update

Ms. Rhine noted that the information provided to the Board gave an update regarding pending regulatory proposals, and was provided for the Board's review.

No public comments were made.

X. Suggestions for Future Agenda Items

No suggestions were made.

XI. Public Comment for Items Not on the Agenda

No public comments were made.

The meeting was adjourned at approximately 2:30 p.m.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 244 **VERSION:** INTRODUCED FEBRUARY 10, 2009

AUTHOR: BEALL **SPONSOR:** AUTHOR

RECOMMENDED POSITION: SUPPORT

SUBJECT: MENTAL HEALTH PARITY

Existing Law:

1) Sets forth the following for group health plans of fifty-one or more employees that provides both medical and surgical benefits and mental health or substance use disorder benefits, beginning no later than October 3, 2009: (42 USCS § 300gg-5)

   a) Prohibits a health plan from placing an annual or lifetime limit on mental health and substance use disorder benefits if the plan does not include a limit for substantially all medical and surgical benefits;

   b) Prohibits the health from placing more restrictive financial requirements on mental health or substance use disorder benefits than those financial requirements applied to all medical and surgical benefits; and,

   c) Prohibits the health plan from placing more restrictive treatment limitations on mental health or substance use disorder benefits than those financial requirements applied to all medical and surgical benefits.

2) States that if a group health plan experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1% as a result of the parity requirements (2% in the first plan –year to which this Act is applicable), the plan can be exempted from the law for the following plan year (42 USCS § 300gg-5).

3) Requires health care service plan contracts and disability insurance policies which cover hospital, medical, or surgical benefits to provide coverage for the following under the same terms and conditions as other medical conditions beginning July 1, 2000: (HSC § 1374.72(a), IC § 10144.5(a))

   a) The diagnosis and treatment of severe mental illnesses
   b) A child's serious emotional disturbance

4) Defines severe mental illness as any of the following: (HSC § 1374.72(d), IC § 10144.5(d))
   a) Schizophrenia.
   b) Schizoaffective disorder.
   c) Bipolar disorder (manic-depressive illness).
   d) Major depressive disorders.
   e) Panic disorder.

f) Obsessive-compulsive disorder.
g) Pervasive developmental disorder or autism.
h) Anorexia nervosa.
i) Bulimia nervosa.

5) Defines "health insurance" as a disability insurance policy that provides coverage for hospital, medical, or surgical benefits in statutes effective on or after January 1, 2002. (IC § 106(b))

This Bill:

1) Permits the Board of Administration of the Public Employees' Retirement System to purchase a health care benefit plan or contract or health insurance policy that includes mental health coverage as described in HSC § 1374.74 or IC § 10144.8. (GC § 22856)

2) Requires health care service plan contracts which provide hospital, medical, or surgical coverage, and health insurance policies issued, amended or renewed on or after January 1, 2010 to provide coverage for the diagnosis and treatment of a mental illness of a person of any age under the same terms and conditions applied to other medical conditions. (HSC § 1374.74(a), IC § 10144.8(a))

3) Defines “mental illness” as a mental disorder defined in the Diagnostic and Statistical Manual IV or subsequent editions, and includes abuse of alcohol, amphetamines, caffeine, cannabis, cocaine, hallucinogens, inhalants, nicotine, opioids, phencyclidine and sedatives. (HSC § 1374.74(a), IC § 10144.8(a))

4) Permits a plan or insurer to provide coverage for all or part of the mental health services required through a separate specialized health care service plan or mental health plan. (HSC § 1374.74(b)(1), IC § 10144.8(b)(1))
   - Does not require a plan or insurer to obtain an additional or specialized license for this purpose.

5) Requires a plan or insurer to provide mental health coverage in its entire service area and in emergency situations as required by law. (HSC § 1374.74(b)(2), IC § 10144.8(b)(2))

6) Does not preclude health care service plans from providing benefits through preferred provider contracting arrangements from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans. (HSC § 1374.74(b)(2), IC § 10144.8(b)(2))

7) Permits a health care service plan to use case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing when providing treatment for mental illness to the extent permitted by law. (HSC § 1374.74(b)(3))

8) Does not deny or restrict the Department of Health Care Services (DHCS) authority to ensure plan compliance when a plan provides coverage for prescription drugs. (HSC § 1374.74(c))

9) Does not apply to contracts entered into between the DHCS and a health care service plan for enrolled Medi-Cal beneficiaries. (HSC § 1374.74(d))

10) Does not apply to a health care benefit plan or contract entered into with the Board of Administration of the Public Employees' Retirement System unless the board elects to purchase a health care benefit plan or contract that provides mental health coverage as described in this legislation. (HSC § 1374.74(e), IC § 10144.8(d))

11) Permits a health insurer to use case management, managed care or utilization review when providing treatment for mental illness except as permitted by law. (IC § 10144.8(b)(3))

12) Prohibits any action that a health insurer takes to implement mental health parity, including but not limited to contracting with preferred provider organizations, to be deemed as an action that would otherwise require licensure as a health care service plan. (IC § 10144.8(b)(4))

13) Does not require mental health parity laws to apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only or vision-only insurance policies. (IC § 10144.8(c))

Comment:

1. **Federal Mental Health Parity.** The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Act) was enacted on October 3, 2008. The Act amends the Mental Health Parity Act of 1996 to require that a group health plan of fifty-one or more employees, that provides both medical and surgical benefits and mental health or substance abuse benefits, ensure that financial requirements and treatment limitations applicable to mental health/substance use disorder benefits are no more restrictive than the predominant requirements and limitations placed on substantially all medical/surgical benefits. The passage of the Act does not mandate mental health or substance use disorder benefit coverage but only states that if mental health/ substance use disorder benefits are offered through a health insurance plan, that those benefits must not be more restrictive or limiting than those offered for medical and surgical coverage under that plan.

   One of the most important aspects of the Act is the inclusion of substance use disorders in the mental health parity law. This act places substance abuse disorder treatment on the same level as mental health disorder treatment. However, the definition of mental health benefits and substance abuse disorder benefits with respect to this Act is as defined under the terms of the health care plan.

   Two major limitations were included in the Act. The first, as with the original 1996 parity law, allows a small employer exemption, making the parity requirements contained therein applicable only to group health plans with more than fifty-one employees. Secondly, the Act states that if a group health plan experiences an increase in actual total costs with respect to medical/surgical and mental health/substance use benefits of 1% as a result of the parity requirements (2% in the first plan –year to which this Act is applicable), the plan can be exempted from the law for the following plan year.

2. **State Mental Health Parity.** Mental illness and substance abuse are among the leading causes of death and disability. AB 88, California's current mental health parity law, was enacted in 2000. This bill requires health plans to provide coverage for mental health services that are equal to medical services, and covers only certain diagnoses considered to be a severe mental illness (SMI) or a serious emotional disturbance of a

child, and therefore is sometimes referred to as "partial parity." AB 244 would extend parity to other non-SMI and substance use disorders.

3. **Necessity of AB 244 with the Passage of Federal Parity Legislation.** The new federal mental health parity legislation will provide benefit parity for Californians that are part of a group health plan that already offers mental health and/or substance use disorder benefits, if that group plan has more than fifty employees. This is a significant step in providing parity in benefits, but it does not mandate that all health plans offer mental health and substance use disorder benefits, nor does the parity requirement apply to smaller group health plans. Additionally, the federal law defers to group health care plans the definition of mental health and substance use disorder conditions and treatment.

   AB 244 would expand parity requirements to all policies that cover hospital, medical or surgical expenses in this state that are issued, amended or renewed on or after January 1, 2010. Additionally, this bill defines mental illness in statute as a disorder defined in the DSM IV, including substance abuse, as opposed to the federal law which allows the health care plan to define mental health and substance use disorder conditions and treatments.

   Lastly, federal law will allow health plans subject to the requirements of the new federal law to not comply if an increase in cost of 1% is incurred as a result of compliance with the legislation. AB 244 does not provide such an exemption.

4. **CHBRP Analysis**. The California Health Benefits Review Program (CHBRP), created by AB 1996 in 2003, is required to analyze all legislation proposing mandated health care benefits. CHBRP performed an extensive analysis of AB 1887 (Beall, 2008), legislation that was virtually identical to AB 244. According to CHBRP, roughly 18.9 million insured individuals would be affected by this bill's mandate. CHBRP also points out that approximately 92% of insured Californians affected by this bill currently have coverage for non-SMI disorders and 8% have none; 82% of insured Californians have some coverage for substance use disorders and 18% have none.

5. **Related Legislation and Board Position.** AB 423 (Beall, 2007) was virtually identical to AB 1887 (Beall, 2008) and AB 244. Both AB 423 and AB 1887 were vetoed by the governor. The Board took a position of "support" on AB 423 and AB 1887, recognizing that mental health parity is a large and complex issue, and that support was grounded in the general idea that people should have access to mental health care.

6. **Governor Veto of Prior Legislation.** Governor Schwarzenegger vetoed identical legislation last year, AB 1887, with the following message:

   > This bill is similar to a measure I vetoed last year. Without comprehensive health care reform that fully addresses prevention, affordability, cost-containment and shared responsibility, I cannot support one-sided mandates that place additional costs on our health care system. This mandate is estimated to increase health care costs for the insured population by over $110 million annually. Mandates like these are a significant driver of cost and mean some individuals may lose their coverage and not receive health care at all.
   >
   > Californians deserve better when it comes to the health care they receive. They deserve comprehensive health care reform that places a

priority on prevention and wellness, provides coverage for all, promotes shared responsibility and makes health care more affordable.

I remain committed to a comprehensive solution. For these reasons, I am unable to support this bill.

7. Support and Opposition. None on file at this time.

8. History

2009

Mar. 4	Referred to Com. on HEALTH.
Feb. 11	From printer. May be heard in committee March 13.
Feb. 10	Read first time. To print.

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ASSEMBLY BILL No. 244

Introduced by Assembly Member Beall
(Principal coauthor: Assembly Member Chesbro)

February 10, 2009

An act to add Section 22856 to the Government Code, to add Section 1374.74 to the Health and Safety Code, and to add Section 10144.8 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 244, as introduced, Beall. Health care coverage: mental health services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health care service plan contract and a health insurance policy are required to provide coverage for the diagnosis and treatment of severe mental illnesses of a person of any age. Existing law does not define "severe mental illnesses" for this purpose but describes it as including several conditions.

This bill would expand this coverage requirement for certain health care service plan contracts and health insurance policies issued, amended, or renewed on or after January 1, 2010, to include the diagnosis and treatment of a mental illness of a person of any age and would define mental illness for this purpose as a mental disorder defined in the Diagnostic and Statistical Manual IV. The bill would specify that this requirement does not apply to a health care benefit plan, contract,

or health insurance policy with the Board of Administration of the Public Employees' Retirement System unless the board elects to purchase a plan, contract, or policy that provides mental health coverage.

Because this bill would expand coverage requirements for health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 22856 is added to the Government Code, to read:

22856. The board may purchase a health care benefit plan or contract or a health insurance policy that includes mental health coverage as described in Section 1374.74 of the Health and Safety Code or Section 10144.8 of the Insurance Code.

SEC. 2. Section 1374.74 is added to the Health and Safety Code, to read:

1374.74. (a) A health care service plan contract issued, amended, or renewed on or after January 1, 2010, that provides hospital, medical, or surgical coverage shall provide coverage for the diagnosis and medically necessary treatment of a mental illness of a person of any age, including a child, under the same terms and conditions applied to other medical conditions as specified in subdivision (c) of Section 1374.72. The benefits provided under this section shall include all those set forth in subdivision (b) of Section 1374.72. "Mental illness" for the purposes of this section means a mental disorder defined in the Diagnostic and Statistical Manual IV, or subsequent editions, published by the American Psychiatric Association, and includes substance abuse.

(b) (1) For the purpose of compliance with this section, a plan may provide coverage for all or part of the mental health services required by this section through a separate specialized health care

service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A plan shall provide the mental health coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) In the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing to the extent permitted by law or regulation.

(c) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

(d) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(e) This section shall not apply to a health care benefit plan or contract entered into with the Board of Administration of the Public Employees' Retirement System pursuant to the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code) unless the board elects, pursuant to Section 22856 of the Government Code, to purchase a health care benefit plan or contract that provides mental health coverage as described in this section.

SEC. 3. Section 10144.8 is added to the Insurance Code, to read:

10144.8. (a) A policy of health insurance that covers hospital, medical, or surgical expenses in this state that is issued, amended, or renewed on or after January 1, 2010, shall provide coverage for the diagnosis and medically necessary treatment of a mental illness

of a person of any age, including a child, under the same terms and conditions applied to other medical conditions as specified in subdivision (c) of Section 10144.5. The benefits provided under this section shall include all those set forth in subdivision (b) of Section 10144.5. "Mental illness" for the purposes of this section means a mental disorder defined in the Diagnostic and Statistical Manual IV, or subsequent editions, published by the American Psychiatric Association, and includes substance abuse.

(b) (1) For the purpose of compliance with this section, a health insurer may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A health insurer shall provide the mental health coverage required by this section in its entire in-state service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health insurers are not precluded from requiring insureds who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) In the provision of benefits required by this section, a health insurer may utilize case management, managed care, or utilization review to the extent permitted by law or regulation.

(4) Any action that a health insurer takes to implement this section, including, but not limited to, contracting with preferred provider organizations, shall not be deemed to be an action that would otherwise require licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(c) This section shall not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only, or vision-only insurance policies.

(d) This section shall not apply to a policy of health insurance purchased by the Board of Administration of the Public Employees' Retirement System pursuant to the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750)

of Division 5 of Title 2 of the Government Code) unless the board elects, pursuant to Section 22856 of the Government Code, to purchase a policy of health insurance that covers mental health services as described in this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 484 **VERSION:** INTRODUCED FEBRUARY 24, 2009

AUTHOR: ENG **SPONSOR:** FRANCHISE TAX BOARD

RECOMMENDED POSITION: OPPOSE UNLESS AMENDED

SUBJECT: BUSINESS AND PROFESSIONAL LICENSES: SUSPENSION: UNPAID TAX LIABILITY

Existing Law:

1) Requires a licensee to provide a federal identification number or social security number at that time of issuance of the license and provides that the licensing entity must report to the Franchise Tax Board (FTB) any licensee that fails to comply with this requirement. (BPC §30 (a)and (b))

2) Requires specified licensing board, upon request of the FTB, to furnish to the FTB the following information with the respect to every licensee: (BPC §30 (d))

   a) Name

   b) Address of record

   c) Federal employer identification number if the entity is a partnership or social security number of all others

   d) Type of license

   e) Effective date if license or renewal

   f) Expiration date of license

   g) Whether license is active, or inactive, if known

   h) Whether license is new or a renewal

3) Allows the FTB to send a notice to any licensee failing to provide the identification number or social security number as required describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty. (RTC §19528(a))

4) Allows the FTB after 30 days following the issuance of the notice describe above to assess a one hundred dollar ($100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number or social security number. (RTC §19528(b))

5) Requires specified licensing entities to immediately serve notice to an applicant of the board's intent to withhold issuance or renewal of the license if the Department of Child Support Services reports that the licensee or applicant is not in compliance with a judgment or order of support. (FC §17520(e)(2))

This Bill:

1) Requires all state licensing entities issuing professional or occupational licenses to provide the names and social security numbers (or federal taxpayer identification number) of licensees to the FTB. (RTC §19265(a)(1))

2) Authorizes FTB to send a notice of license suspension to the issuing state licensing entity and the licensee if the licensee has unpaid state tax liabilities. (RTC §19265(a)(3)

3) Requires that FTB give the licensee 60 days notice of the suspension. (RTC §19265(a)(2))

4) Permits the affected licensee to request an administrative hearing to contest the suspension due to substantial financial hardship within 30 days of the notice of suspension, and requires FTB to provide for a hearing within 30 days of receipt of the request. (RTC §19265(b))

5) Permits FTB to defer or cancel any license suspension based on a demonstration of financial hardship by the licensee, and if the licensee agrees to an acceptable payment arrangement. (RTC §19265(b)(1) and(4))

6) Requires FTB to notify both the licensee and licensing entity within 10 days of the licensee satisfying the tax debt either through payment or agreement to payment terms. (RTC §19265(a)(4))

7) Requires state governmental licensing entities to provide the information required by this section to FTB when needed. (RTC §19265(a)(5))

8) States that implementation of this bill is contingent on the appropriation of funds in the Budget Act. (RTC §19265(d))

9) Expresses that it is the understanding and intent of the Legislature that consistent with the decision in Crum v. Vincent (8th Cir. 2007) 593F3d 988, the suspension of a professional or occupational license for failure to file returns or pay delinquent taxes satisfies the due process requirement of the California and Federal constitutions if a taxpayer is provided an opportunity for a hearing to challenge a proposed tax assessment prior to it becoming final and collectable. Because California law provides an opportunity for a hearing prior to a proposed assessment becoming final, due process is satisfied without an additional hearing prior to the suspension of a professional or occupational license of a delinquent taxpayer. (uncodified language)

Comment:

1) **Author's Intent.** According to the author's office, current state law lacks an effective method to collect income taxes from licensees who operate on a cash basis. This proposal would reduce the tax gap by increasing enforcement measures to collect outstanding taxes by giving FTB the ability to suspend certain tax debtors' professional or occupational licenses

2) **Background.** According to background provided by the author's office, California loses approximately $1.4 billion annually as a result of uncollected tax liabilities that apply to professional and occupational licensees. While FTB has an automated tax collection system to search records and locate delinquent assets, this system is largely ineffective against taxpayers who operate on a cash basis because current information on their income is unavailable.

   The author's office asserts that this bill will reduce the tax gap by increasing the collection and enforcement measures available to FTB. There are over 25,000 delinquent taxpayers with a state-issued occupational or professional license, and this bill will enable FTB to suspend their ability to generate income until they reconcile their delinquency with FTB**.**

3) **Possible confusion on license status**. This bill provides that FTB shall mail a notice of suspension to the licensee and the Board upon suspension of the license. By mailing the notice to Board after the license has been suspended, and at the same time the licensee is notified, miscommunication and confusion as to the status of the license may occur. It is possible that the licensee may receive the notice of suspension before the Board has processed the notification. Additionally, until the Board is notified of suspension, the Board Web site, and all information provided by the Board to consumers and licensees would indicate that the license is active and in good standing.

   Within 10 working days of payment of tax liabilities or an installment agreement, FTB will notify the licensee and the Board that the license suspension has been canceled. However, internal board enforcement action may affect the status of a license, unbeknownst to FTB. Because of this duplication of disciplinary action by two separate governmental entities, miscommunication and mistaken action against a licensee will most likely ensue.

4) **Unintended consequences to patients under the care of board licensees.** The practical side effect of this bill is that patients of board licensed practitioners will suddenly lose their mental health care provider. The mental health arena is already suffering from a documented workforce shortage, and although the Board believes that licensees should be held accountable for unpaid taxes and related financial liabilities to the state, the practical consequence to the consumers may far out weigh the potential revenue to the state. This bill will ultimately punish the patient and not the practitioner.

   Additionally, many nonprofit facilities utilize board licensed professionals in order to receive Medi-Cal reimbursement for mental health services rendered. In some workforce shortage areas, the loss of a licensed practitioner may mean the difference between continuing to provide services and being forced to limit or even stop mental health services altogether.

5) **Suggested Amendments**. It is important to both hold licensees accountable for their actions and to preserve vital programs for the public. Additionally, in the face of the state budget crisis, it is important to address the issue of outstanding tax liabilities – revenue needed to help prevent the reduction in core state programs and services. However, staff recommends looking within the current constructs of existing law to address the issues asserted by FTB. It is important that the board maintain the enforcement function relative to board licensees in order to continue to provide continuity in care and consumer protection.

   Staff recommends amending this bill to allow the board to suspend the licenses of individuals with outstanding tax liabilities based on the model currently used for individuals in violation of a judgment or order for child support (Family Code § 17520). The Department of Consumer Affairs and the Board already have a process in place that allows the Board to receive information regarding individuals out of compliance with child support orders, and, in

turn, requires the board to take action against those licensees, including suspension or denial of licensure. This model, if applied to licensees and applicants for licensure with outstanding tax liabilities, will provide a mechanism by which to collect due revenue to the state while also allowing the board to retain its regulatory and enforcement functions.

6) **Previous Legislation and Board Action.** On May 30, 2008 the Board voted to oppose virtually identical legislation (AB 1925, Eng, 2008) unless the measure was amended to delete the current language and instead model the bill on the existing practice for child support obligations set forth in Family Code section 17520 (see above discussion). AB 1925 failed to pass out of Senate Committee of Revenue and Taxation.

7) **Support and Opposition.**
Support: Franchise tax Board (sponsor)

Opposition: None on file.

8) **History**
2009

Mar. 16	Referred to Coms. on B. & P. and REV. & TAX.
Feb. 25	From printer. May be heard in committee March 27.
Feb. 24	Read first time. To print.

Attachments
Crum v. Vincent (8th Cir. 2007) 593F3d 988
Family Code Section 17520

ASSEMBLY BILL No. 484

Introduced by Assembly Member Eng

February 24, 2009

An act to amend Sections 31 and 7145.5 of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as introduced, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee.

This bill would require a state governmental licensing entity, as defined, issuing professional or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the Franchise Tax Board, if an individual licensee fails to pay taxes for which a notice of state tax lien has been recorded, as specified, to send a preliminary notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid

taxes by a certain date shall be automatically suspended, except as specified, would require the Franchise Tax Board to mail a notice of suspension to the applicable state governmental licensing entity and to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 31 of the Business and Professions Code is amended to read:

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code.

(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code.

(d) Each licensee who has not paid any applicable state income tax, including interest, penalties, and other fees, shall be subject to Section 19265 of the Revenue and Taxation Code.

SEC. 2. Section 7145.5 of the Business and Professions Code is amended to read:

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by the board, the Department of Industrial

Relations, the Employment Development Department, or the Franchise Tax Board.

(1) Until the debts covered by this section are satisfied, the qualifying person and any other personnel of record named on a license that has been suspended under this section shall be prohibited from serving in any capacity that is subject to licensure under this chapter, but shall be permitted to act in the capacity of a nonsupervising bona fide employee.

(2) The license of any other renewable licensed entity with any of the same personnel of record that have been assessed an outstanding liability covered by this section shall be suspended until the debt has been satisfied or until the same personnel of record disassociate themselves from the renewable licensed entity.

(b) The refusal to issue a license or the suspension of a license as provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension that indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(c) *(1)* In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors' State License Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information that includes the federal employee identification number or social security number.

~~(d)~~

(2) All versions of the application for contractors' licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.

(d) This section shall not be interpreted to conflict with the suspension of a license pursuant to Section 19265 of the Revenue and Taxation Code.

SEC. 3. Section 19265 is added to the Revenue and Taxation Code, to read:

19265. (a) (1) All state governmental licensing entities issuing professional or occupational licenses, certificates, registrations, or

permits shall provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number, as applicable, of each licensee of that state governmental licensing entity.

(2) If any licensee has failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, for which a notice of state tax lien has been recorded in any county recorder's office in this state, pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, the Franchise Tax Board shall mail a preliminary notice of suspension to the licensee indicating that the license will be suspended by a date certain, which shall be at least 60 days after the mailing of the preliminary notice, unless prior to the date certain the licensee pays the unpaid taxes or enters into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes. The preliminary notice shall also advise the licensee of the opportunity to request deferral or cancellation of a suspension pursuant to subdivision (b).

(3) If any licensee subject to paragraph (2) fails to pay the unpaid taxes or to enter into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes prior to the date certain listed in the preliminary notice of suspension, his or her license shall be automatically suspended by operation of this section, except as provided in subdivision (b), and the Franchise Tax Board shall mail a notice of suspension to the applicable state governmental licensing entity and to the licensee. The rights, powers, and privileges of any licensee whose professional or occupational license, certificate, registration, or permit has been suspended pursuant to this section shall be subject to the same prohibitions, limitations, and restrictions as if the professional or occupational license, certificate, registration, or permit were suspended by the state governmental licensing entity that issued the professional or occupational license, certificate, registration, or permit.

(4) Upon compliance by the licensee with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes, a suspension pursuant to this subdivision shall be canceled. The Franchise Tax Board shall, within 10 business days

of compliance by the licensee with the tax obligation, notify both the state governmental licensing entity and the licensee that the unpaid taxes have been paid or that an installment payment agreement, as described in Section 19008, has been entered into to satisfy the unpaid taxes and that the suspension has been canceled.

(5) State governmental licensing entities shall provide to the Franchise Tax Board the information required by this subdivision at a time that the Franchise Tax Board may require.

(b) (1) The Franchise Tax Board may defer or cancel any suspension authorized by this section if a licensee would experience financial hardship. The Franchise Tax Board shall, if requested by the licensee in writing, provide for an administrative hearing to determine if the licensee will experience financial hardship from the suspension of the license, certificate, registration, or permit.

(2) The request for a hearing specified in paragraph (1) shall be made in writing within 60 days from the mailing date of the preliminary notice described in subdivision (a).

(3) The Franchise Tax Board shall conduct a hearing within 30 days after receipt of a request pursuant to paragraph (1), unless the board postpones the hearing, upon a showing of good cause by the licensee, in which case a suspension pursuant to subdivision (a) shall be deferred until the hearing has been completed.

(4) A licensee seeking relief under this subdivision shall only be entitled to relief described in paragraph (1) if the licensee provides the Franchise Tax Board with financial documents that substantiate a financial hardship, and agrees to an acceptable payment arrangement.

(c) For purposes of this section and Section 19571, the following definitions shall apply:

(1) “Financial hardship” means financial hardship within the meaning of Section 19008, as determined by the Franchise Tax Board, where suspension of a license will result in the licensee being financially unable to pay any part of the amount described in subdivision (a) and the licensee is unable to qualify for an installment payment arrangement as provided for by Section 19008. In order to establish the existence of a financial hardship, the licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the Franchise Tax Board for the purpose of making that determination.

(2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(3) "Licensee" means an individual authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420 of the Business and Professions Code, the office of the Attorney General, the Department of Insurance, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation. "State governmental licensing entity" shall not include the Department of Motor Vehicles.

(d) Implementation of this section shall be contingent on the appropriation of funds for the purposes of this section in the annual Budget Act.

SEC. 4. Section 19571 is added to the Revenue and Taxation Code, to read:

19571. (a) The Franchise Tax Board may disclose to state governmental licensing entities information regarding suspension of a license pursuant to Section 19265.

(b) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the Franchise Tax Board, pursuant to this section, except to inform the public of the suspension of a license pursuant to Section 19265.

(c) For purposes of this section, the definitions in Section 19265 shall apply.

SEC. 5. The Legislature hereby finds and declares the following:

(a) It is the intent of the Legislature that, consistent with the decision in Gallo v. United States District Court (9th Cir. 2003) 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of a professional or occupational license pursuant to this act for failure to pay delinquent taxes is a legislative act, for which due process is satisfied by the legislative notice and hearing procedures.

(b) To prevent financial hardship, Section 19265 of the Revenue and Taxation Code, as added by this act, grants a delinquent taxpayer the opportunity for an additional hearing for financial hardship prior to the suspension of a professional or occupational license.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 612 **VERSION:** INTRODUCED FEBRUARY 25, 2009

AUTHOR: BEALL **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: CHILD CUSTODY INVESTIGATIONS

Existing Law:

1) Requires a mental examination to be performed only by a licensed physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. (Civil Code of Procedures § 2032.020(c))

2) States that health, safety, and welfare of children is the court's primary concern when determining the best interests of children in child custody and visitation orders. (Family Code § 3020)

3) Permits the court, in a contested custody or visitation proceeding where the court determines it is in the best interests of the child, to appoint a child custody evaluator to conduct a child custody evaluation. (FC § 3111)

4) Requires court connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. (FC § 1816)

5) Requires the Judicial Council to adopt standards for child custody evaluations. (FC § 3117)

This Bill:

1) Defines "Nonscientific theory" as a theory regarding human behavior and interaction that is not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards as promulgated by a majority of licensed professionals in the medical, psychiatric, and psychological communities, including, but not limited to, an alienation theory. (FC § 3005)

2) Prohibits a court, in a proceeding to determine child custody, from considering a nonscientific theory, as defined, in the making of a child custody determination. (FC § 3045)

3) Prohibits a court, in a proceeding to determine visitation, from considering a nonscientific theory, as defined, in the making of that determination. (FC § 3100.5)

4) Prohibits a court, in any contested proceeding involving child custody or visitation rights, from considering or receiving into evidence a report, assessment, evaluation, or

investigation prepared if that report, assessment, evaluation, or investigation includes a nonscientific theory. (FC § 3110.6)

Comment:

1) **Author's Intent.** According to the author, this bill would correct instances where child custody evaluations were conducted improperly by using unscientific and unvalidated methods.

2) **Nonscientific Theory.** This bill prohibits the use of a "nonscientific theory" in making a determination related to a child visitation and custody cases. The definition of nonscientific theory as used in this bill includes an "alienation theory." Parental alienation syndrome (PAS) and similar terms have been used over the past approximately twenty years to describe a child who has been "brainwashed" by one parent against another parent with little or no justification, and includes "the child's own contributions to the vilification of the target parent." It is described as "a disorder that arises primarily in the context of child custody disputes" and does not include true cases of parental abuse/neglect.[1]

   Articles on the topic have appeared in a number of peer-reviewed journals, including the American Journal of Family Therapy and the American Journal of Forensic Psychiatry. Additionally PAS has been recognized in the following court cases:

   - Coursey v. Superior Court, 194 Cal.App.3d 147,239 Cal.Rptr. 365 (Cal.App. 3 Dist., Aug 18, 1987.
   - John W. v. Phillip W., 41 Cal.App.4th 961, 48 Cal.Rptr.2d 899; 1996.
   - Valerie Edlund v. Gregory Hales, 66 Cal. App 4th 1454; 78 Cal. Rptr. 2d 671.

   Despite a growing body of literature, there are controversies regarding PAS, especially by mental health professionals. As stated in the American Journal of Forensic Psychiatry[2], "Critics of PAS argue that it:

   - Oversimplifies the causes of alienation
   - Leads to confusion in clinical work with alienated children
   - Lacks an adequate scientific foundation to be a syndrome."

   Additionally, the exclusion of a nonscientific label or diagnosis is consistent with basic California rule for admission of scientific evidence that the scientific basis and reliability must be generally accepted by recognized authorities in the relevant scientific field (People v. Kelly, 17 Cal. 3d 24, 31 (1976)).

3) **Previous Legislation and Board Action.** AB 612 (Ruskin) of 2007 was considered by this Committee and the Board. The Committee did not make a recommendation to the Board, and the full Board did not take a formal position on the legislation.

4) **Support and Opposition.**
   None on file

5) **History**
   2009
   Mar. 16 Referred to Com. on JUD.

[1] *Basic Facts About Parental Alienation Syndrome*, Richard Gardner, May 31, 2001,
[2] *Current Controversies Regarding Parental Alienation Syndrome*. American Journal of Forensic Psychology, Vol. 19, No. 3, 2001, P. 29-59. Richard A. Warshak, Ph.D.

Feb. 26	From printer. May be heard in committee March 28.
Feb. 25	Read first time. To print.

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ASSEMBLY BILL No. 612

Introduced by Assembly Member Beall

February 25, 2009

An act to amend Section 3111 of, and to add Sections 3005, 3045, 3100.5, and 3110.6 to, the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as introduced, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. Existing law requires the Judicial Council to adopt standards for court-connected evaluations, investigations, and assessments related to child custody.

This bill would prohibit a court from considering a nonscientific theory, as defined, in making a determination regarding child custody or visitation with a child. The bill would also prohibit a court from considering or receiving into evidence a report, assessment, evaluation, or investigation prepared pursuant to the provisions described above if it includes a nonscientific theory. By revising the standards for

court-connected evaluations, investigations, and assessments related to child custody, the bill would require the Judicial Council to adopt rules and forms implementing those revised standards.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3005 is added to the Family Code, to read:

3005. "Nonscientific theory" means a theory regarding human behavior and interactions that is not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards as promulgated by a majority of licensed professionals in the medical, psychiatric, and psychological communities, including, but not limited to, an alienation theory.

SEC. 2. Section 3045 is added to the Family Code, to read:

3045. In a proceeding to determine child custody, a court shall not consider a nonscientific theory in making that determination.

SEC. 3. Section 3100.5 is added to the Family Code, to read:

3100.5. In a proceeding to determine visitation with a child, a court shall not consider a nonscientific theory in making that determination.

SEC. 4. Section 3110.6 is added to the Family Code, to read:

3110.6. Notwithstanding any other provision of law, in any contested proceeding involving child custody or visitation rights, a court may not consider and may not receive into evidence a report, assessment, evaluation, or investigation prepared pursuant to this chapter if that report, assessment, evaluation, or investigation includes a nonscientific theory.

SEC. 5. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases ~~where~~ *in which* the court determines it is in the best ~~interests~~ *interest* of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written

confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. ~~The~~ *Except as otherwise provided in Section 3110.6, the* report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(c) ~~The~~ *Except as otherwise provided in Section 3110.6, the* report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

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Basic Facts About The Parental Alienation Syndrome

DEFINITION OF THE PARENTAL ALIENATION SYNDROME

In association with this burgeoning of child-custody litigation, we have witnessed a dramatic increase in the frequency of a disorder rarely seen previously, a disorder that I refer to as the *parental alienation syndrome* (PAS). In this disorder we see not only programming ("brainwashing") of the child by one parent to denigrate the other parent, but self-created contributions by the child in support of the alienating parent's campaign of denigration against the alienated parent. Because of the child's contribution I did not consider the terms *brainwashing, programming,* or other equivalent words to be sufficient. Furthermore, I observed a cluster of symptoms that typically appear together, a cluster that warranted the designation *syndrome*. Accordingly, I introduced the term *parental alienation syndrome* to encompass the *combination* of these two contributing factors that contributed to the development of the syndrome (Gardner, 1985). In accordance with this use of the term I suggest this definition of the parental alienation syndrome:

> *The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.*

In the PAS, the alienating parent programs into the child's brain circuitry ideas and attitudes that are directly at variance with the child's previous experiences. In addition, PAS children frequently add their own scenarios to the campaign of denigration, from the recognition that their complementary contributions are desired by the programmer. The child's contributions are welcomed and reinforced by the programmer, resulting in even further contributions by the child. The result is an upwardly spiraling campaign of denigration. In mild cases the child is taught to disrespect, disagree with, and even act out antagonistically against the targeted parent. As the disorder progresses from mild to moderate to severe, this antagonism becomes converted and expanded into a campaign of denigration. The PAS diagnosis is based on the symptoms of the child, but the problem is clearly a family problem in that in each case there is one parent who is a programmer, another parent who is the alienated parent, and one or more children who exhibit the symptomatology. PAS children respond to the programming in

such a way that it appears that they have become completely amnesic for any and all positive and loving experiences they may have had previously with the targeted parent.

The term *PAS* is applicable *only* when the target parent has *not* exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the children. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the *exaggeration* of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child's responding alienation is warranted and the PAS diagnosis is *not* applicable. The term *parental alienation* would be applicable in such cases and justifiably so. However, without specifying the particular cause of the alienation the term is not particularly informative.

PARENTAL ALIENATION

Parental Alienation (PA) refers to the wide variety of symptoms that may result from or be associated with a child's alienation from a parent. Children may become alienated from a parent because of physical abuse, with or without sexual abuse. Children's alienation may be the result of parental emotional abuse, which may be overt in the form of verbal abuse or more covert in the form of neglect. (As will be described below PAS, as a form of emotional abuse, is also a type of parental alienation.) Children may become alienated as the result of parental abandonment. Ongoing parental acrimony, especially when associated with physical violence, may cause children to become alienated. Children may become alienated because of behavior exhibited by a parent that would be alienating to most people, e.g., narcissism, alcoholism, and antisocial behavior. Impaired parenting can also bring about children's alienation. A child may be angry at the parent who initiated the divorce, believing that that parent is solely to blame for the separation. These and many other parental behaviors can produce children's alienation, but none of them can justifiably be considered PAS.

IS PAS A TRUE SYNDROME ?

Some who prefer to use the term *parental alienation* (PA) claim that the PAS is not really a syndrome. This position is especially seen in courts of law in the context of child-custody disputes. A syndrome, by medical definition, is a cluster of symptoms, occurring together, that characterize a specific disease. The symptoms, although seemingly disparate, warrant being grouped together because of a common etiology or basic underlying cause. Furthermore, there is a consistency with regard to such a cluster in that most (if not all) of the symptoms appear together. The term *syndrome* is more specific than the related term *disease*. A disease is usually a more general term because there can be many causes of a particular disease. For example, pneumonia is a disease, but there are many types of pneumonia—e.g., pneumococcal pneumonia and bronchopneumonia—each of which has more

specific symptoms, and each of which could reasonably be considered a syndrome (although common usage may not utilize the term).

The syndrome has a purity because most (if not all) of the symptoms in the cluster predictably manifest themselves together as a group. Often, the symptoms appear to be unrelated, but they actually are because they usually have a common etiology. An example would be Down's Syndrome, which includes a host of seemingly disparate symptoms that do not appear to have a common link. These include mental retardation, mongoloid facies, drooping lips, slanting eyes, short fifth finger, and atypical creases in the palms of the hands. Down's Syndrome patients often look very much alike and most typically exhibit all these symptoms. The common etiology of these disparate symptoms relates to a specific chromosomal abnormality. It is this genetic factor that is responsible for linking together these seemingly disparate symptoms. There is then a primary, basic cause of Down's Syndrome: a genetic abnormality.

Similarly, the PAS is characterized by a cluster of symptoms that usually appear together in the child, especially in the moderate and severe types. These include:

1. A campaign of denigration

2. Weak, absurd, or frivolous rationalizations for the deprecation

3. Lack of ambivalence

4. The "independent-thinker" phenomenon

5. Reflexive support of the alienating parent in the parental conflict

6. Absence of guilt over cruelty to and/or exploitation of the alienated parent

7. The presence of borrowed scenarios

8. Spread of the animosity to the friends and/or extended family of the alienated parent

Typically, children who suffer with PAS will exhibit most (if not all) of these symptoms. However, in the mild cases one might not see all eight symptoms. When mild cases progress to moderate or severe, it is highly likely that most (if not all) of the symptoms will be present. This consistency results in PAS children resembling one another. It is because of these considerations that the PAS is a relatively "pure" diagnosis that can easily be made. Because of this purity, the PAS lends itself well to research studies because the population to be studied can usually be easily identified. Furthermore, I am confident that this purity will be verified by future interrater reliability studies. In contrast, children subsumed under the rubric PA are not likely to lend

themselves well to research studies because of the wide variety of disorders to which it can refer, e.g., physical abuse, sexual abuse, neglect, and defective parenting. As is true of other syndromes, there is in the PAS a specific underlying cause: programming by an alienating parent in conjunction with additional contributions by the programmed child. It is for these reasons that PAS is indeed a syndrome, and it is a syndrome by the best medical definition of the term.

In contrast, PA is not a syndrome, has no specific underlying cause, and the proponents of the term do not claim it is. Actually, PA can be viewed as a group of syndromes, which share in common the phenomenon of the child's alienation from a parent. To refer to PA as a group of syndromes would, by necessity, lead to the conclusion that the PAS is one of the syndromes subsumed under the PA rubric and would thereby weaken the argument of those who claim that PAS is not a syndrome.

THE PARENTAL ALIENATION SYNDROME AND "PARENTAL ALIENATION"

There are some who use the term *parental alienation* instead of *parental alienation syndrome*. Generally, these are individuals who know of the existence of the parental alienation syndrome but want to avoid using it because it may be considered in some circles to be "politically incorrect." But they are basically describing the same clinical entity. There are others who will use the term *parental alienation syndrome* but strictly avoid mentioning my name in association with it, lest they be somehow tainted. Unfortunately, the substitution of the term *parental alienation* for *parental alienation syndrome* can only result in confusion. *Parental alienation* is a more general term, whereas the *parental alienation syndrome* is a very specific subtype of parental alienation. Parental alienation has many causes, e.g., parental neglect, abuse (physical, emotional, and sexual), abandonment, and other alienating parental behaviors. All of these behaviors on the part of a parent can produce alienation in the children. The parental alienation syndrome is a specific subcategory of parental alienation that results from a combination of parental programming and the child's own contributions, and it is almost exclusively seen in the context of child-custody disputes. It is this particular combination that warrants the designation *parental alienation syndrome*. Changing the name of an entity because of political and other unreasonable considerations generally does more harm than good.

THE PARENTAL ALIENATION SYNDROME IS *NOT* THE SAME AS PROGRAMMING BRAINWASHING

It has come as a surprise to me from reports in both the legal and mental health literature that the definition of the PAS is often misinterpreted. Specifically, there are many who use the term as synonymous with parental brainwashing or programming. No reference is made to the child's own contributions to the victimization of the targeted parent. Those who do this have missed an extremely important point regarding the etiology,

manifestations, and even the treatment of the PAS. The term *PAS* refers *only* to the situation in which the parental programming is *combined with* the child's own scenarios of disparagement of the vilified parent. Were we to be dealing here simply with parental indoctrination, I would have simply retained and utilized the terms *brainwashing* and/or *programming*. Because the campaign of denigration involves the aforementioned *combination,* I decided a new term was warranted, a term that would encompass *both* contributory factors. Furthermore, it was the child's contribution that led me to my concept of the etiology and pathogenesis of this disorder. The understanding of the child's contribution is of importance in implementing the therapeutic guidelines described in this book.

THE RELATIONSHIP BETWEEN THE PARENTAL ALIENATION SYNDROME AND BONA FIDE ABUSE AND/OR NEGLECT

Unfortunately, the term *parental alienation syndrome* is often used to refer to the animosity that a child may harbor against a parent who has *actually* abused the child, especially over an extended period. The term has been used to apply to the major categories of parental abuse: physical, sexual, and emotional. Such application indicates a misunderstanding of the PAS. The term *PAS* is applicable *only* when the target parent has *not* exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the child. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the *exaggeration* of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child's responding alienation is warranted and the PAS diagnosis is *not* applicable.

Programming parents who are accused of inducing a PAS in their children will sometimes claim that the children's campaign of denigration is warranted because of bona fide abuse and/or neglect perpetrated by the denigrated parent. Such indoctrinating parents may claim that the counteraccusation by the target parent of PAS induction by the programming parent is merely a "cover-up," a diversionary maneuver, and indicates attempts by the vilified parent to throw a smoke screen over the abuses and/or neglect that have justified the children's acrimony. There are some genuinely abusing and/or neglectful parents who will indeed deny their abuses and rationalize the children's animosity as simply programming by the other parent. This does not preclude the existence of truly innocent parents who are indeed being victimized by an unjustifiable PAS campaign of denigration. When such cross-accusations occur—namely, bona fide abuse and/or neglect versus a true PAS—it behooves the examiner to conduct a detailed inquiry in order to ascertain the category in which the children's accusations lie, i.e., true PAS or true abuse and/or neglect. In some situations, this differentiation may not be easy, especially when there has been some abuse and/or neglect and the PAS has been superimposed upon it, resulting thereby in much more deprecation than would be justified in this situation. It is for this reason that

detailed inquiry is often crucial if one is to make a proper diagnosis. Joint interviews, with all parties in all possible combinations, will generally help uncover "The Truth" in such situations.

THE PARENTAL ALIENATION SYNDROME AS A FORM OF CHILD ABUSE

It is important for examiners to appreciate that a parent who inculcates a PAS in a child is indeed perpetrating a form of *emotional abuse* in that such programming may not only produce lifelong alienation from a loving parent, but lifelong psychiatric disturbance in the child. A parent who systematically programs a child into a state of ongoing denigration and rejection of a loving and devoted parent is exhibiting complete disregard of the alienated parent's role in the child's upbringing. Such an alienating parent is bringing about a disruption of a psychological bond that could, in the vast majority of cases, prove of great value to the child—the separated and divorced status of the parents notwithstanding. Such alienating parents exhibit a serious parenting deficit, a deficit that should be given serious consideration by courts when deciding primary custodial status. Physical and/or sexual abuse of a child would quickly be viewed by the court as a reason for assigning primary custody to the nonabusing parent. Emotional abuse is much more difficult to assess objectively, especially because many forms of emotional abuse are subtle and difficult to verify in a court of law. The PAS, however, is most often readily identified, and courts would do well to consider its presence a manifestation of emotional abuse by the programming parent.

Accordingly, courts do well to consider the PAS programming parent to be exhibiting a serious parental deficit when weighing the pros and cons of custodial transfer. I am not suggesting that a PAS-inducing parent should automatically be deprived of primary custody, only that such induction should be considered a serious deficit in parenting capacity—a form of emotional abuse—and that it be given serious consideration when weighing the custody decision. In this book, I provide specific guidelines regarding the situations when such transfer is not only desirable, but even crucial, if the children are to be protected from lifelong alienation from the targeted parent.

"THE PARENTAL ALIENATION SYNDROME DOES NOT EXIST BECAUSE IT IS NOT IN DSM-IV"

There are some, especially adversaries in child-custody disputes, who claim that there is no such entity as the PAS, that it is only a theory, or that it is "Gardner's theory." Some claim that I invented the PAS, with the implication that it is merely a figment of my imagination. The main argument given to justify this position is that it does not appear in DSM-IV. The DSM committees justifiably are quite conservative with regard to the inclusion of newly described clinical phenomena and require many years of research and publications before considering inclusion of a disorder, and this is as it should be. The PAS exists! Any lawyer involved in child-custody disputes will attest to that fact. Mental health and legal professionals involved in such disputes must

be observing it. They may not wish to recognize it. They may give it another name (like "parental alienation"). But that does not preclude its existence. A tree exists as a tree regardless of the reactions of those looking at it. A tree still exists even though some might give it another name. If a dictionary selectively decides to omit the word *tree* from its compilation of words, that does not mean that the tree does not exist. It only means that the people who wrote that book decided not to include that particular word. Similarly, for someone to look at a tree and say that the tree does not exist does not cause the tree to evaporate. It only indicates that the viewer, for whatever reason, does not wish to see what is right in front of him (her). To refer to the PAS as "a theory" or "Gardner's theory" implies the nonexistence of the disorder. It implies that it is a figment of my imagination and has no basis in reality. To say that PAS does not exist because it is not listed in DSM-IV is like saying in 1980 that AIDS does not exist because it is not listed in standard diagnostic medical textbooks. The PAS is not a theory, it is a fact. My ideas about its etiology and psychodynamics might very well be called theory. The crucial question then is whether my theory regarding the etiology and psychodynamics of the PAS is reasonable, and whether my ideas fit in with the facts. This is something for the readers of this book to decide.

But why this controversy in the first place? With regard to whether PAS exists, we generally do not see such controversy regarding most other clinical entities in psychiatry. Examiners may have different opinions regarding the etiology and treatment of a particular psychiatric disorder, but there is usually some consensus about its existence. And this should especially be the case for a relatively "pure" disorder such as the PAS, a disorder that is easily diagnosable because of the similarity of the children's symptoms when one compares one family with another. Over the years, I have received many letters from people who have essentially said: "Your PAS book is uncanny. You don't know me and yet I felt that I was reading my own family's biography. You wrote your book before all this trouble started in my family. It's almost like you predicted what would happen." Why, then, should there be such controversy over whether or not PAS exists?

One explanation lies in the situation in which the PAS emerges and in which the diagnosis is made: vicious child-custody litigation. Once an issue is brought before a court of law—in the context of adversarial proceedings—it behooves one side to take just the opposite position from the other, if one is to prevail in that forum. A parent accused of inducing a PAS in a child is likely to engage the services of a lawyer who may invoke the argument that there is no such thing as a PAS. And if this lawyer can demonstrate that the PAS is not listed in DSM-IV, then the position is considered "proven." The only thing this proves to me is that DSM-IV has not yet listed the PAS. It also proves the low levels to which members of the legal profession will stoop in order to zealously support their client's position, no matter how ludicrous their arguments and how destructive they are to the children.

An important factor operative in the PAS not being listed in DSM-IV relates to political issues. Things that are "hot" and "controversial" are not likely to get the consensus that more neutral issues enjoy. As I will elaborate upon below,

the PAS has been dragged into the political-sexual arena, and those who would support its inclusion in DSM-IV are likely to find themselves embroiled in vicious controversy and the object of scorn, rejection, and derision. The easier path, then, is to avoid involving oneself in such inflammatory conflicts, even if it means omitting from DSM one of the more common childhood disorders.

The PAS is a relatively discrete disorder and is more easily diagnosed than many of the other disorders in DSM-IV. At this point, articles are coming forth and it is being increasingly cited in court rulings. Articles about PAS in the scientific literature will be cited throughout the course of this book. Court rulings in which the PAS is cited are also appearing with increasing frequency. I continue to list these on my website as they appear (http://www.rgardner.com/refs). My hope is that by the time committees are formed for the preparation of DSM-V, the committee(s) evaluating for inclusion will see fit to include the PAS and have the courage to withstand those holdouts who, for whatever reason, need to deny the reality of the world. It may interest the reader to note that if PAS is ultimately included in the DSM, its name will be changed to include the term *disorder,* the current label utilized for psychiatric illnesses that warrant inclusion. It might very well have its name changed to *parental alienation disorder*.

"PEOPLE WHO DIAGNOSE PARENTAL ALIENATION SYNDROME ARE SEXIST"

Another reason for the controversy regarding the existence of the PAS relates to the fact that in the vast majority of families it is the mother who is likely to be the primary programmer and the father the victim of the children's campaign of denigration. My own observations since the early 1980s, when I first began to see this disorder, has been that in 85–90 percent of all the cases in which I have been involved, the mother has been the alienating parent and the father has been the alienated parent. For simplicity of presentation, then, I have often used the term *mother* to refer to the alienator, and the term *father* to refer to the alienated parent. I recently conducted an informal survey among approximately 50 mental health and legal professionals whom I knew were aware of the PAS and deal with such families in the course of their work. I asked one simple question: What is the ratio of mothers to fathers who are successful programmers of a PAS? The responses ranged from mothers being the primary alienators in 60 percent of the cases to mothers as primary alienators in 90 percent of the cases. Only one person claimed it was 50/50, and no one claimed it was 100 percent mothers. In the 1998 edition of my book *The Parental Alienation Syndrome* (especially Chapter Five) I discuss this gender difference in greater detail and provide references in the scientific literature confirming the preponderance of mothers over fathers in inducing successfully a PAS in their children.

In recent years it has become "politically risky" and even "politically incorrect" to describe gender differences. Such differentiations are acceptable for such disorders as breast cancer and diseases of the uterus and ovaries. But once

one moves into the realm of personality patterns and psychiatric disturbances, one is likely to be quickly branded a "sexist" (regardless of one's sex). And this is especially the case if it is a man who is claiming that a specific psychiatric disorder is more likely to be prevalent in women. My observations that PAS inducers are much more likely to be women than men has subjected me to this criticism. The fact that most other professionals involved in child-custody disputes have had the same observation still does not protect me from the criticism that this is a sexist observation. The fact that I recommend that most mothers who are inducing a PAS should still be designated the primary custodial parent does not seem to protect me from this criticism.

My basic position regarding custodial preference has always been that the primary consideration in making a custodial recommendation is that the children should be preferentially assigned to that parent with whom they have the stronger, healthier psychological bond. Because the mother has most often been the primary caretaker, and because the mother is more often available to the children than the father (I am making no comments as to whether this is good or bad, only that this is what *is*), she is most often designated the preferable primary custodial parent by courts of law. Somehow this position has been converted by some critics into sexism *against* women.

THE PARENTAL ALIENATION SYNDROME AND SEX-ABUSE ACCUSATIONS

A false sex-abuse accusation is sometimes seen as a derivative or spin-off of the PAS. Such an accusation may serve as an extremely effective weapon in a child-custody dispute. Obviously, the presence of such false accusations does not preclude the existence of bona fide sex abuse, even in the context of a PAS.

In recent years, some examiners have been using the term PAS to refer to a false sex-abuse accusation in the context of a child-custody dispute. In some cases the terms are used synonymously. This is a significant misperception of the PAS. In the majority of cases in which a PAS is present, the sex-abuse accusation is not promulgated. In some cases, however, especially after other exclusionary maneuvers have failed, the sex-abuse accusation will emerge. The sex-abuse accusation, then, is often a spin-off, or derivative, of the PAS but is certainly not synonymous with it. Furthermore, there are divorce situations in which the sex-abuse accusation may arise without a preexisting PAS. Under such circumstances, of course, one must give serious consideration to the possibility that true sex abuse has occurred, especially if the accusation antedated the marital separation.

Another factor operative in the need to deny the existence of the PAS, and relegate it to the level of being only a "theory," is its relationship to sex-abuse accusations. I mention frequently throughout the course of this book that a sex-abuse accusation is a possible spin-off or derivative of the PAS. My experience has been that the sex-abuse accusation does not appear in the vast majority of PAS cases. There are some, however, who equate the PAS

with a sex-abuse accusation, or a false sex-abuse accusation. My experience has been that when a sex-abuse accusation emerges in the context of a PAS—especially after the failure of a series of exclusionary maneuvers—the accusation is far more likely to be false than true. Claiming that a sex-abuse accusation may be false also has potentially been politically risky in recent years and not "politically correct." Those of us who have stood up and made such claims, both within and outside of the realm of the PAS, have subjected ourselves to enormous criticism—often impassioned and irrational. My experience has been that sex-abuse accusations that arise within the context of PAS situations are more likely to be directed toward men than women. Accordingly, in sex-abuse cases *in the context of custody disputes* I am more likely to testify in support of the man. This somehow proves me "sexist." The fact that I have most often testified in support of women to be designated the primary custodial parent—even when there has been a sex-abuse accusation—does not seem to dispel this myth.

RECOGNITION OF PAS IN COURTS OF LAW

Some who hesitate to use the term PAS claim that it has not been accepted in courts of law. This is not so. Although there are certainly judges who have not recognized the PAS, there is no question that courts of law with increasing rapidity are recognizing the disorder. My website (www.rgardner.com/refs) currently cites 51 cases in which the PAS has been recognized. By the time this article is published, the number of citations will certainly be greater. Furthermore, I am certain that there are other citations that have not been brought to my attention.

It is important to note that on January 30, 2001, after a two-day hearing devoted to whether the PAS satisfied Frye Test criteria for admissibility in a court of law, a Tampa, Florida court ruled that the PAS had gained enough acceptance in the scientific community to be admissible in a court of law (Kilgore v. Boyd, 2001). This ruling was subsequently affirmed by the District Court of Appeals (February 6, 2001). In the course of those two days of testimony, I brought to the court's attention the more than 100 peer-reviewed articles (there are 106 at the time of this writing) by approximately 100 other authors and over 40 court rulings (there are 50 at the time of this writing) in which the PAS had been recognized (www.rgardner.com/refs). I am certain that these publications played an important role in the judge's decision. This case will clearly serve as a precedent and facilitate the admission of the PAS in other cases—not only in Florida, but elsewhere.

Whereas there are some courts of law that have not recognized PAS, there are far fewer courts that have not recognized PA. This is one of the important arguments given by those who prefer the term PA. They do not risk an opposing attorney claiming that PA does not exist or that courts of law have not recognized it. There are some evaluators who recognize that children are indeed suffering with a PAS, but studiously avoid using the term in their reports and courtroom, because they fear that their testimony will not be

admissible. Accordingly, they use PA, which is much safer, because they are protected from the criticisms so commonly directed at those who use PAS. Later in this article I will detail the reasons why I consider this position injudicious.

Many of those who espouse PA claim not to be concerned with the fact that their more general construct will be less useful in courts of law. Their primary interest, they profess, is the expansion of knowledge about children's alienation from parents. Considering the fact that the PAS is primarily (if not exclusively) a product of the adversary system, and considering the fact that PAS symptoms are directly proportionate to the intensity of the parental litigation, and considering the fact that it is the court that has more power than the therapist to alleviate and even cure the disorder, PA proponents who claim unconcern for the long-term legal implications of their position is injudicious and, I suspect, specious.

WHICH TERM TO USE IN THE COURTROOM: PA OR PAS?

Many examiners, then, even those who recognize the existence of the PAS, may consciously and deliberately choose to use the term parental alienation in the courtroom. Their argument may go along these lines: "I fully recognize that there is such a disease as the PAS. I have seen many such cases and it is a widespread phenomenon. However, if I mention PAS in my report, I expose myself to criticism in the courtroom such as, 'It doesn't exist,' 'It's not in DSM-IV' etc. Therefore, I just use PA, and no one denies that." I can recognize the attractiveness of this argument, but I have serious reservations about this way of dealing with the controversy-especially in a court of law.

As mentioned earlier, there are many causes of parental alienation, e.g., physical abuse, emotional abuse, sexual abuse, neglect, and a wide variety of other parental behaviors that will justifiably alienate children. But there is another reason why children can become alienated from a parent, namely, being programmed into a campaign of denigration by an alienating parent. The disorder so produced, parental alienation syndrome, is also a form of parental alienation. In short, the PAS is one subtype of parental alienation. To call PAS PA cannot but produce confusion because it equates a pure clinical entity (PAS) with a generic term (PA) under which is subsumed a wide variety of clinical entities. One reason why medicine has progressed is that we have become ever more discriminating regarding the various subtypes that exist for any particular disease. One of the reasons why Hippocrates is known as "The Father of Medicine" is that he was one of the first to make such differentiations. Prior to his time people suffered with "fits." It was he who recognized that there were different kinds of fits, each requiring a different form of treatment. One form of fits he referred to as epilepsy. Another he referred to as hysteria. His group was astute enough to recognize the differences between these different kinds of fits and provided different kinds of treatment. Three hundred years ago people suffered with "heart disease." Now, we know that there are many different kinds of heart disease, each

requiring its own form of treatment. One would not want to go to a doctor today who makes the diagnosis of fits and heart disease and does not go any further. We want specifics. Similarly, saying that a child has "parental alienation" gives very little information. Anyone can observe that-the clients, the mother, the father, both lawyers, the guardian ad litem, and the judge. We want to define specifically the type of the alienation, and PAS is just one possible type. We are then in a far better position to provide specific treatment. Those who eschew the term PAS, for whatever reason, but embrace the term PA, are equivalent to those who would diagnose fits and heart disease without identifying the specific subtype with which the patient is suffering. Accordingly, using PA does not represent progression, it represents regression.

Using the term PAS identifies a specific programmer. In contrast, using PA clearly indicates that the children are alienated and that either parent could have exhibited behavior that could have resulted in the alienation. The term, then, removes the court's focus away from the alienator and redirects attention to what might be only minor parental deficiencies exhibited by the alienated parent. Substituting PA for PAS is, therefore, a disservice to the targeted parent. If the examiner is a mental health professional (most often the case), then the utilization of PA under these circumstances is an abrogation of one's professional responsibilities to do what is best for the patient or client. Using PA is basically a terrible disservice to the PAS family because the cause of the children's alienation is not properly identified. It is also a compromise in one's obligation to the court, which is to provide accurate and useful information so that the court will be in the best position to make a proper ruling. Using PA is an abrogation of this responsibility; using PAS is in the service of fulfilling this obligation.

Furthermore, evaluators who use PA instead of PAS are losing sight of the fact that they are impeding the general acceptance of the term in the courtroom. This is a disservice to the legal system, because it deprives the legal network of the more specific PAS diagnosis that could be more helpful to courts for dealing with such families. Moreover, using the PA term is shortsighted because it lessens the likelihood that some future edition of DSM will recognize the subtype of PA that we call PAS. This not only has diagnostic implications, but even more importantly, therapeutic implications. The diagnoses included in the DSM serve as a foundation for treatment. The symptoms listed therein serve as guidelines for therapeutic interventions and goals. Insurance companies (who are always quick to look for reasons to deny coverage) strictly refrain from providing coverage for any disorder not listed in the DSM. Accordingly, PAS families cannot expect to be covered for treatment. Elsewhere (Gardner, 1998) I describe additional diagnoses that are applicable to the PAS, diagnoses that justify requests for insurance coverage. Examiners in both the mental health and legal professions who genuinely recognize the PAS, but who refrain from using the term until it appears in DSM, are lessening the likelihood that it will ultimately be included because widespread utilization is one of the criteria that DSM committees consider. Such restraint, therefore, is an abrogation of their responsibility to contribute to the enhancement of knowledge in their professions. The PAS manifests the

kind of specificity that is one of the hallmarks of the expansion of knowledge and progression. PA clouds specificity, which is one of the hallmarks of intellectual stagnation and even regression.

There is, however, a compromise. I use PAS in all those reports in which I consider the diagnosis justified. I also use the PAS term throughout my testimony. However, I sometimes make comments along these lines, both in my reports and in my testimony:

"Although I have used the term PAS, the important questions for the court are: Are these children alienated? What is the cause of the alienation? and What can we then do about it? So if one wants to just use the term PA, one has learned something. But we haven't really learned very much, because everyone involved in this case knows well that the children have been alienated. The question is what is the cause of the children's alienation? In this case the alienation is caused by the mother's (father's) programming and something must be done about protecting the children from the programming. That is the central issue for this court in this case, and it is more important than whether one is going to call the disorder PA or PAS, even though I strongly prefer the PAS term for the reasons already given."

I wish to emphasize that I do not routinely include this compromise, because whenever I do so I recognize that I am providing support for those who are injudiciously eschewing the term and compromising thereby their professional obligations to their clients and the court.

Richard A. Gardner, M.D.
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CURRENT CONTROVERSIES REGARDING PARENTAL ALIENATION SYNDROME

Richard A. Warshak, Ph.D.

Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters. This article draws on the relevant literature to examine the main controversies surrounding the use of the term PAS by mental health professionals. The focus is on controversies regarding the conceptualization of the problem of alienated children, the reliability and validity of PAS, and the treatment of PAS. Some attention is given to issues relevant to the admissibility of expert testimony on PAS, such as the use of the term "syndrome," the question of whether PAS has passed peer review, and whether PAS enjoys general acceptance in the relevant professional community.

Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters (1, 2). Proponents of the term believe it: 1) accurately describes a subset of children whose unreasonable alienation from a parent results, in large measure, from the influence of the other parent; 2) assists in recognizing, understanding, and treating this group of children; and 3) describes a cluster of behaviors displayed by these children which warrants the designation “syndrome.” They regard the term as helpful to courts in deciding the best interests of children and believe that testimony regarding PAS should be admissible.

Critics of PAS argue that it: 1) oversimplifies the causes of alienation, 2) leads to confusion in clinical work with alienated children, and 3) lacks an adequate scientific foundation to be considered a syndrome. They argue that the term is misused in court and that testimony regarding this diagnosis, its course, and its treatment should be inadmissible.

This article examines the main controversies surrounding the use of the term PAS by mental health professionals. It focuses on controversies in the mental health profession, including conceptualization, empirical research, and treatment issues. The article gives some attention to certain issues relevant to the admissibility of expert testimony on PAS, such as the use of the term “syndrome” and the issues of peer review and general acceptance among clinicians, but this article does not purport to provide a comprehensive treatment of this area.

WHAT IS PARENTAL ALIENATION SYNDROME?

Parental alienation syndrome refers to a disturbance whose primary manifestation is a child’s unjustified campaign of denigration against, or rejection of, one parent, due to the influence of the other parent combined with the child’s own contributions (3, 4). Note three essential elements in this definition: 1) rejection or denigration of a parent that reaches the level of a campaign, i.e., it is persistent and not merely an occasional episode; 2) the rejection is unjustified, i.e., the alienation is not a reasonable response to the alienated parent’s behavior; and 3) it is a partial result of the non-alienated parent’s influence. If either of these three elements is absent, the term PAS is not applicable.

Some of the controversy over PAS results from the failure to consider the second and third elements as integral aspects of the concept. Attorneys, therapists, and parents may falsely

conclude that a child suffers from PAS based only on the first element—the child's negative behavior. This reflects an inadequate understanding of the concept. Some critics of PAS make the same mistake (5-8; see 9 for Gardner's rebuttal). They equate PAS with only the first element, attack this straw man concept, and conclude that PAS leads to confusion and misuse when they are themselves confused about the concept. Before concluding that PAS is present, in addition to the child's alienation, it must be established that the alienation is irrational, and is influenced by the favored parent. Properly understood, a clinician using the term PAS does not automatically assume that the favored parent has influenced a child's alienation from the other parent. Rather, the term PAS is used to describe only those children who are 1) alienated, 2) irrationally, 3) under the influence of the favored parent. PAS does not apply in the absence of evidence for all three elements.

Child psychiatrist Richard A. Gardner, M.D. introduced the term in 1985, but he was not the first to describe this phenomenon (10). In 1949, psychoanalyst Wilhelm Reich wrote about parents who seek "revenge on the partner through robbing him or her of the pleasure in the child" (11; p. 265). And in 1980, Wallerstein and Kelly described children in their research project who "were particularly vulnerable to being swept up into the anger of one parent against the other. They were faithful and valuable battle allies in efforts to hurt the other parent. Not infrequently, they turned on the parent they had loved and been very close to prior to the marital separation" (12; p.77).

Despite these earlier descriptions, it was Gardner's detailed account of the origin, course, and manifestations of the phenomenon, along with his guidelines for intervention by courts and therapists, that captured the attention of the mental health and legal professions and stimulated the growing literature on the topic (for a review see 1, 2, 13; for a comprehensive list of publications see 14). Along with the study and elucidation of PAS, controversy remains about how to conceptualize, label, and treat this phenomenon.

CONCEPTUALIZING PAS

To establish a new diagnostic category, we must establish that: 1) the phenomenon exists; 2) it is a disturbance or deviation from the norm; and 3) its symptoms warrant a separate diagnosis and cannot more reasonably be subsumed under a previously existing category.

Most mental health and legal professionals agree that some children whose parents divorce develop extreme animosity toward one parent that is not justified by that parent's behavior and, to some extent, is promulgated or supported by the other parent. That such children exist is not a point of contention in the social science literature. At issue is whether we should regard this type of disturbance as abnormal, and if so, whether a separate diagnosis for these children provides significant benefits beyond already existing labels, and whether PAS is the best way to conceptualize and label this disturbance.

Is a Child's Unreasonable Alienation Normal?

Though it might seem an obvious point, not everyone agrees that a child's unreasonable denigration and rejection of a parent should be considered an abnormal development worthy of professional attention. One author believes it is possible that parental alienation is a normal part of growing up (15). She argued that we have no basis for regarding parental alienation as abnormal because we lack normative data from intact and low-conflict divorced families, i.e., we lack research on the prevalence of this phenomenon.

The position that it might be normal for children to be alienated from their parents is inconsistent

with the scientific literature. It overlooks research on children's adjustment in divorced families and on healthy parent-child relations in intact families.

The literature on the effects of parent conflict on children documents the harm to children who are caught in the middle of the conflict, as in situations where they are encouraged to side with one parent against the other (16). Studies of children's attitudes about their parents' divorce consistently reveal that most children long for more time with each parent and wish their parents would reunite (12, 17-19). One study, for example, reported that regardless of custodial status, 84% of children longed for their divorced parents' reconciliation (17; p. 41). The desire to be with a parent is normative, not the desire to avoid a parent.

Regarding intact families, the research is clear that the type of denigration, hatred and fear characteristic of PAS is foreign to most intact families and would be considered a symptom worthy of treatment (20). Even in clinical samples with children who are enmeshed with one parent, usually the mother, the children still tolerate their father. I am unaware of any reports in the literature, nor any therapeutic programs, in which a parent in an intact family, who is not guilty of child abuse or gross mistreatment, is advised to cut off contact with the children in response to conflicted parent-child relationships. Instead, articles and books on treatment suggest strategies for helping the family understand and heal ruptured parent-child relationships.

Alternative Models of the Problem of Alienated Children

The consensus that a child's unreasonable alienation from a parent is a problem does not extend to the issue of how to conceptualize the problem. Wallerstein finds the term PAS unnecessary and believes that the problem is subsumed under her concept of "overburdened children" who must attend to the needs of disturbed parents at the expense of their own psychological development (2, 21). She does, however, introduce the term "Medea Syndrome" to refer to vindictive parents who destroy their child's relationship with the ex-spouse (21). Other authors conceptualize the phenomenon as a vulnerable child's maladaptive reaction to a high conflict divorce (22). This "high conflict model" accepts the utility of a separate classification for alienated children. It uses terms such as "unholy alliances" and "extreme forms of parent alienation" in place of PAS (23; pp. 174, 202). The high conflict model differs from Gardner's conceptualization in that greater emphasis is placed on the child's psychological vulnerabilities and the contributions of the entire family system to the child's alienation. By contrast, some authors place greater emphasis on the behavior of alienating parents and distinguish their destructive behavior (labeled "parent alienation") from PAS which is one possible outcome of such behavior (24).

Kelly and Johnston expressed concern that PAS oversimplifies the causes of alienation and that Gardner's formulation leads to confusion and misuse in litigation (25). To remedy these flaws, they drew on their considerable clinical and mediation experience with divorced families to propose a reformulation of PAS which they call "the alienated child" (hereinafter referred to as the AC model).

The AC model defines an alienated child as one who "expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent" (25). This definition retains two of the three essential elements in the concept of PAS. The free and persistent expression of negative feelings corresponds to the campaign of denigration. And the unreasonableness of the feelings corresponds to the alienation being unjustified. The third element of PAS, the influence of the alienating parent, is not part of the definition of an alienated child. The omission is deliberate. The AC model notes that the manipulations of one parent are

insufficient to explain alienation because some children resist attempts to undermine their affection for a parent. Thus, other factors must play a role, and this model emphasizes the importance of multiple interrelated factors in the etiology of alienation. The AC model organizes these "alienating processes" into background factors that directly or indirectly affect the child, and intervening variables that influence the child's response to the background factors. Examples of background factors are a history of the parents involving the children in severe marital conflict, the circumstances surrounding the separation and divorce, and the child's cognitive capacity and temperament. Examples of intervening variables are each parent's behavior, sibling relationships, and the child's vulnerabilities.

Comparison of Parental Alienation Syndrome and the Alienated Child Model

In their critique, Kelly and Johnston characterize PAS as focusing almost exclusively on the alienating parent as the cause of the child's alienation. This characterization is not entirely accurate. Even the definition of PAS refers to the influence of the other parent combined with the child's own contributions. Gardner discusses several factors within children that lead to their joining with one parent in denigrating the other. To a lesser extent he discusses why some children are able to resist an alienating parent's influence and maintain affection for both parents.

In addition to the contributions of the child, the literature on PAS has repeatedly and clearly identified contributions of people in addition to the alienating parent, including the alienated parent, new partners, therapists, custody evaluators, and relatives (2, 3, 26-32). Particularly in his earlier work, though, Gardner did give less emphasis to the role of the alienated parent. His recent work elaborates on the contributing behaviors of alienated parents, particularly in terms of their passivity, but he continues to regard alienating parents' contributions as primary (33). In some respects, Gardner, who is a physician, has cast PAS in a medical model. By contrast, Kelly, a psychologist, and Johnston, a sociologist, prefer a family systems approach which gives more detailed attention to a wider range of factors without labeling any as primary.

The reformulation of PAS was also a response to its misuse in litigation. Specific concerns are that children are diagnosed with PAS who are not truly alienated or whose alienation is warranted by the history of their relationship to the alienated parent (3; pp. xx, xxviii, 13, 25, 30, 34, 35).

In some cases alienation is confused with situations in which a child prefers, or feels more comfortable with, one parent, or is significantly aligned with one parent, but still seeks to maintain a relationship with the other (25). In other cases a child may resist spending time with a parent, but is neither alienated nor acting under the influence of the other parent (13, 30, 34, 35). Such a child may exhibit hostility and apparent rejection of a parent that: 1) is temporary and short-lived rather than chronic, 2) is occasional rather than frequent; 3) occurs only in certain situations, 4) coexists with expressions of genuine love and affection, and 5) is directed at both parents (35). Situations that meet these criteria include some 'normal reactions to divorce, developmentally normal separation anxiety, the behavior of difficult or troubled children, attempts to avoid exchanges that occur in an explosive climate, a concern about a parent's emotional state when left alone, and situation specific reactions, such as a teenager who refuses to be around a new stepparent (34, 35).

Alienation may be justified in cases where a child is physically or sexually abused; witnesses domestic violence, frightening displays of rage, or the aftermath of violence; or suffers severe emotional abuse, neglect, abandonment, or very poor treatment by a chronically angry, rigidly punitive, extremely self-centered, or substance-abusing parent (25, 34, 35).

Gardner is clear that such situations do not constitute PAS, and he has expressed concern about the misuse of PAS (3). He gives considerable attention to distinguishing between PAS and alienation that is a response to parental abuse or neglect (36). And, without going into detail, he recognizes that children resist contact with a parent for a variety of reasons other than PAS, and that PAS is not the same as the situation where a child aligns with one parent without participating in a campaign of denigration against the other parent. The AC model gives much more specific attention to these categories than does Gardner, although articles by other authors working within the PAS framework have addressed these categories (13, 30, 34).

The AC model provides a detailed and organized description of behaviors which clarifies the distinction between alienated children and non-alienated children who show an affinity for, or strongly align with, one parent, while still maintaining a relationship with the other parent (25). In addition, the AC model gives examples of factors that can lead children to develop such affinities and alignments. By introducing specific terms to denote the categories of behavior that resemble and may be mistaken for PAS, and delineating the behaviors of children in each of these categories, the AC model may facilitate a welcome reduction in the incidence of PAS misdiagnosis and misuse. This would represent a substantial contribution that results in wiser clinical and judicial decisions.

What is unclear, however, is whether the term “alienated child” provides significant advantages over PAS. Until Gardner’s initial work on PAS, the divorce research literature made only occasional mention of children alienated from, or rejecting, a parent. The term, PAS, has proved useful in facilitating communication among clinicians and fostering numerous publications in peer-review journals. At last count there were 108 publications that focused significantly or exclusively on PAS and alienated children. Most of these were in peer-review journals, some were book chapters, and a very few were by authors who have subsequently withdrawn their support for the term PAS. Because of space considerations; the reader is referred elsewhere for a list of PAS reference citations in addition to those cited in this article (1, 2, 14).

It is possible to adopt a family systems theory of PAS, and to differentiate the various reasons for children’s rejection of parents, while retaining the familiar term PAS to denote children whose denigration and rejection goes beyond “alignment” and is not a reasonable response to the rejected parent’s behavior (30, 34).

Dropping the term “syndrome” when referring to irrationally alienated children, and limiting oneself to behavioral descriptions, does avoid legal issues surrounding the admissibility of expert testimony on PAS. But it is not clear how changing the term from PAS to “alienated child” would lead to fewer misidentifications of children who are unreasonably alienated from a parent. As with PAS, the term “alienated child” can be misapplied to children who are not alienated, or whose alienation is warranted.

In one respect, the terms proposed in the AC model may result in more confusion. Kelly and Johnston use the term “estrangement” to refer to alienation that is a realistic response to parental behavior, such as occurs in cases of parental abuse. They contrast this with “alienation” that is not a realistic response. This may be confusing because the terms “estrange” and “alienate” are synonyms.

The first definition in the dictionary under the entry “alienate” is “to make indifferent or averse; estrange” and the entry offers this sentence as an illustration: “He has alienated his entire family” (37; p. 37). The dictionary entry for “alienation of affections” is: “Law, the estrangement by a third person of one spouse from the other” (37; p.37). The first entry for “estrange” is “to turn away in feeling or affection; alienate the affections of” (37; p. 488). And the definition of

"estranged" is "displaying or evincing a feeling of alienation; alienated" (37; p. 488). The use of synonyms to describe these two distinct types of alienation (reasonable versus unreasonable) invites confusion, particularly as the concepts leave the arena of mental health professionals and are used in legal circles and the popular press. Though intended to draw a clear distinction, the synonymous terms may inadvertently obscure the difference. It would be useful to have a label to refer to children whose alienation from a parent is reasonable, but "estranged" is probably not the best candidate.

Before leaving this discussion, it should be noted that neither Gardner nor Kelly and Johnston have proposed a term to refer to children whose severe alienation is not warranted by the rejected parent's behavior, but who have come to be alienated in the absence of manipulations by the favored parent. Some aligned parents of alienated children agree that the other parent has done nothing to warrant the child's extreme rejection, but they also deny having contributed to the alienation and profess great concern over their child's disturbed behavior toward the rejected parent. For the sake of conceptual clarity, it makes sense to designate a term to describe this phenomenon. A possible candidate is the phrase "child-driven alienation" which has been used to describe children whose unreasonable rejection of a parent is a misguided way of coping with difficult feelings (35). The absence of a separate term for these children may be less of a problem for the AC model because it would apparently categorize such a child as alienated, with no particular assumption about the contributing factors. According to the definition of PAS, however, without the contributions of the alienating parent such a child would not fit the category of PAS.

On balance, the two formulations appear more similar than different. Both agree that some children become alienated without adequate justification, and both regard this phenomenon as a disturbance rather than a type of normal development. Both agree on how to recognize this disturbance and on how to distinguish it from alienation that is a realistic response to parental mistreatment.

Despite using different terms, both agree on the behaviors which characterize aligned parents and pathologically alienated children. In fact, the list of symptoms is nearly identical. They differ on the name given to the phenomenon, and on the relative contributions of the aligned parent. The AC model sees a greater role played by the alienated parent and the child, while recognizing the contributions of the aligned parent. According to Kelly (personal communication, 2000), this model does not regard the behavior of an alienating parent as necessary to create an alienated child, although it recognizes that it is often present. The PAS formulation sees a greater role played by the parent who is fostering the alienation, while recognizing the contributions of the child and, to a much lesser extent, the alienated parent. Both formulations rule out pathological alienation when the contributions of the rejected parent are substantial enough to warrant the child's alienation. Overall, I believe the difference between the models is one of emphasis, and not a fundamental distinction, although this is open to dispute. Kelly (personal communication, 2000) indicated that the final version of her article with Johnston (25) will sharpen the distinctions between their model and PAS.

Both models are based on clinical experience. Both find support in the literature for some aspects of their formulation, while neither has large-scale empirical research to validate its conceptual superiority. There are substantial differences in the treatment approaches each advocates, but diagnostic terms are independent of the discovery or proposal of new treatments.

An advantage of the AC formulation is that it provides a differentiated view of the processes, factors, and behaviors in the entire family system which result in a child's unreasonable alienation from a parent. Also, it clarifies the distinction between what is and is not alienation. An

advantage of PAS is that the concept is widely known and has stimulated a clinical literature that has elucidated and refined our understanding of this disturbance. Abandoning the term would impede integration of the existing literature with future work. Also, the term PAS has the virtue of parsimony: It clearly denotes a circumscribed group of alienated children—those whose alienation is not warranted by the history of the child's relationship with the rejected parent. By contrast, the phrase "alienated child" is ambiguous with respect to the reasonableness of the alienation, and thus requires additional descriptors (e.g.,"pathological") to distinguish it from what the AC model calls "estrangement."

A final caveat: Kelly (personal communication, 2000) indicated that the manuscript in press was being edited and that the final version would include revisions and refinements which address some of the points raised in the present article. Also scheduled for publication in the same journal issue (edited by Johnston and Kelly) are three articles elaborating this model's approach to case management, custody evaluations, and therapeutic interventions. The reader is encouraged to consult these articles for the most complete and recent statement of this model.

Future work will undoubtedly result in further refinements of the AC model as well as PAS. It remains to be seen whether the AC reformulation will gain general acceptance among clinicians working with divorced families and among experts witnesses, and replace PAS, or whether future additions to the literature will support, or be compatible with, the retention and utility of the concept PAS.

RELIABILITY

The misidentification and misuse of PAS raises the issue of its reliability. Reliability, in the social sciences, means something different than legal reliability. For scientists, reliability refers to the degree to which a statistical measurement, test result, or diagnosis, is consistent on repeated trials or among different observers. A proposed syndrome, such as PAS, has high reliability if different clinicians, examining the same children, reach a high rate of agreement on which children do or do not have the syndrome. Naturally, it is not necessary for clinicians to reach one hundred percent agreement in order to qualify as having reached a scientifically acceptable level of reliability. Two doctors often disagree on a diagnosis; that is why we get second opinions. But, if the symptoms of the proposed diagnosis are too imprecise and ambiguous, or require an excessively high degree of inference on the part of the observer, the rates of disagreement may be unacceptably high. In such cases, the proposed syndrome should undergo further refinement (such as more precise definitions of symptoms) before it gains general acceptance.

The description of PAS symptoms (3), and the description of the behaviors seen in the alienated child (25), appear on the surface to be clear-cut and intelligible. We await empirical research, however, which tests the ability of clinicians to apply these symptoms to case material and agree on whether or not a particular symptom is present in a particular child. For example, Gardner lists "weak, absurd, or frivolous rationalizations for the deprecation" of a parent as one symptom of PAS. Kelly and Johnston list "trivial or false reasons used to justify hatred" as a behavior seen in an alienated child (note the close similarity between the two models). Can different observers agree on what constitutes frivolous or trivial justifications? Or is this symptom so inherently ambiguous that, after examining the same children, clinicians will disagree to a significant extent on which children's reasons for rejecting a parent are reasonable and which should be dismissed as trivial?

To date, no study has directly measured the extent to which different examiners, with the same data, can agree on the presence or absence of PAS (or, for that matter, alienation in a child). Until a sufficiently high rate of agreement on the presence or absence of PAS is established

through systematic research, the diagnosis will not attain the empirical support which is probably necessary to achieve acceptance on a par with the disorders recognized in the American Psychiatric Association's official description of diagnoses (38). And, until such data exist, the reliability of PAS cannot be supported by reference to scientific literature. This does not mean that the diagnosis lacks reliability, any more than it meant that the diagnosis of AIDS lacked reliability prior to the publication of empirical research on the syndrome.

VALIDITY

The validity of the concept PAS is a more complex issue than reliability. It relates to some of the issues explored in the earlier discussion of conceptualization. The central question is whether PAS accurately, adequately, and usefully describes a disturbance suffered by some children.

As is true of most, if not all, newly proposed syndromes, Gardner based his identification and description of PAS on his clinical experience. The same is true of all existing formulations of the problem of alienated children. To establish the validity of PAS, the scientific literature must demonstrate that the clinical observations that formed the basis for the initial formulation are representative of a wider population of children. There are generally two stages in this process. First, other clinicians report on their experiences related to the phenomenon, supplementing and refining the initial proposal. These reports are either anecdotal accounts of a few cases, or reports of a larger volume of cases, organized and analyzed in some systematic fashion. Second, empirical research with larger samples of subjects, standardized and systematic measures, and appropriate scientific controls tests hypotheses drawn from the clinical reports in the literature. The field of PAS study is just beginning to enter the second stage with studies in progress.

The descriptions of PAS in the clinical literature have struck a chord of recognition among divorcing parents, attorneys and mental health professionals. As we have seen, even alternative formulations of the phenomenon agree that unjustified parental alienation sometimes accompanies custody battles and that the favored parent sometimes contributes to this alienation. The concept of PAS has served to organize a volume of articles on the appropriate identification and treatment of a child suffering with this problem (1, 2). The frequency of reports in the clinical literature, and the close similarity of reported cases to Gardner's descriptions, lends support to the validity of PAS. Reality is not determined by popular vote, but the burgeoning literature is evidence of the utility of the PAS concept, at least as experienced by practitioners in the field. As discussed below, this is relevant to the admissibility of PAS testimony.

Kopetski published two reports on severe PAS in a sample of 413 court-ordered custody evaluations conducted by the Family and Children's Evaluation Team in Colorado (39, 40). Prior to learning of Gardner's work, the team identified 84 cases of severe alienation that led them "independently to conclusions that were remarkably similar to Gardner's conclusions regarding the characteristics of the syndrome." Independent identification of the same cluster of symptoms would generally be considered strong support for the validity of a newly proposed syndrome.

Dunne and Hedrick found Gardner's criteria useful in differentiating 16 cases of severe PAS from other cases with other post-divorce disturbances (41). Other clinicians have also found the PAS concept useful in organizing their impressions of alienated children (30-32, 42-45). Common experience and clinical cases, however, must be corroborated by systematic empirical investigations.

A 12-year study of 700 divorce families, commissioned by the American Bar Association Section on Family Law, is the one large-scale study which has delineated the phenomenon in which divorced and divorcing parents program and manipulate their children to turn against the other

parent (29). This study provides some empirical support for the validity of PAS. As an early study in the field, it is heavily descriptive and the description of procedures does not make clear exactly how the data were analyzed and what procedures were used to ensure the reliability of the results. Nevertheless, because of the wealth of experience reflected in the large number of families studied, and the detailed and sophisticated analysis of the problem, this study's observations and conclusions merit significant weight. Gold-Bikin offers this view: 'This treatise is based on years of experience counseling families in divorce and evaluating children during custody litigation. It should provide guidance to the bar, bench, and mental health professionals in ascertaining whether a child has been intentionally brainwashed or alienated from one parent by the other parent..." (46; p. ix).

There is considerable scientific research which supports the conclusions of the ABA-sponsored study and validates key facets of PAS. Chief among these are the bodies of literature on children exposed to parental conflict (16), on programming and brainwashing (47, 48), and on children's suggestibility (49). Numerous methodologically sophisticated studies have established that children are susceptible to accepting suggestions that an innocent adult did harmful or illegal things and then repeating these suggestions as if they were true (49). Children will even provide elaborate details of events that never occurred. Research findings on programming, brainwashing, stereotype induction, and children's suggestibility help to explain how one parent could exert enough influence over a child to cause that child to lose affection and respect for the other parent.

Systematic empirical research is lacking when it comes to validating the specific cluster of symptoms that characterizes PAS. There is, as yet, no specification of which symptoms and how many are necessary for the diagnosis. It should be noted, however, that many of the diagnoses in DSM-IV also lack research which empirically verifies the appropriate number of symptoms necessary to make the diagnosis (50).

As discussed earlier, some clinicians believe that Gardner's formulation of the causes of PAS oversimplifies the situation and places undue emphasis on the alienating parent. This is explored in a later section. If this criticism is correct, it may modify our understanding of the etiology of PAS, but may not undermine the validity of the PAS phenomenon itself. Gardner himself expects that the concept of PAS will be refined and elaborated by future investigators (3).

PAS AS A SYNDROME

The use of the term "syndrome" in reference to alienated children has sparked heated debate. A syndrome is "a grouping of signs and symptoms based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection." This seems descriptive of PAS.

Some have argued that PAS does not qualify as a syndrome because not every child who is exposed to alienating behavior by one parent develops the same distinct disorder (25). This reasoning is not compelling. In medicine, including psychiatry, it is well-recognized that the same pathological agent can produce different outcomes in different individuals. This generally does not invalidate the syndrome or disorder. For example, rape may, but does not always, result in a posttraumatic stress disorder (PTSD—originally termed a syndrome). The fact that some victims survive traumas without developing PTSD does not disqualify PTSD as a proper diagnostic entity. Another example is adjustment disorder. Two children may experience the death of a parent or a divorce. One develops an adjustment disorder and the other escapes any diagnosable mental disorder. The American Psychiatric Association, which acknowledges that most of its official diagnostic categories are syndromes, specifically assumes that some disorders will "result

mainly from an interplay of psychological, social, and biological factors" (51; p. xxiii). This seems to allow for a multi-factored approach to understanding. PAS, while retaining the term "syndrome."

A greater concern is that the medical designation "syndrome" conveys an established stature and legitimacy that may be more appropriate following more rigorous empirical research. In court, the term "syndrome" may strengthen confidence in the scientific basis of the witness' testimony and, by implication, in the value and reliability of that testimony.

An additional concern about syndrome evidence is that expert witnesses sometimes offer a collection of symptoms as a test to prove the existence of one particular causal agent, even in the absence of independent verification of the cause. In the case of PAS this would mean that, after determining that a child has the behaviors characteristic of alienated children, the expert assumes that the existence of alienation supports a claim that the favored parent must have fostered the alienation. This is clearly a misuse of PAS; by definition, the manipulations of the favored parent must be identified in order to diagnose PAS.

Mosteller has proposed that the purpose for which syndrome evidence is used should govern its admissibility (52). When an expert proffers syndrome evidence as a test of whether certain conduct has occurred, such as child sexual abuse, "the science must be of the highest quality and should satisfy the standards set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc*." (52; p. 468). Mosteller argues that less exacting scientific standards should apply when the expert relies on syndrome evidence "to correct human misunderstandings of the apparently unusual and therefore suspicious reactions of a trial participant" (52; p. 467).

Although PAS testimony should not be used as a test of whether the aligned parent promulgated the child's alienation, it can provide the court with an alternative explanation of a child's negative or fearful conduct and attitudes. Also, PAS testimony can assist the court in evaluating a child's ability to perceive, recollect, or communicate. When PAS has been misdiagnosed, as in the case of children who are not alienated, or whose alienation is justified by the rejected parent's behavior, expert testimony on PAS may be proffered in rebuttal.

Testimony by an expert knowledgeable about the strategies that parents use to promulgate and support alienation, the extent to which children can be manipulated to reject and denigrate a parent, the extent to which children are suggestible, the mechanics of stereotype induction, and the psychological damage associated with involving children in parental hostilities, may assist the court in determining the proper amount of weight to give a child's explicitly stated preferences and statements regarding each parent. The expert can demonstrate that a child's statement of preference, even when executed in an affidavit, does not necessarily reflect the history of that child's relationship with the non-preferred parent, particularly when the child totally rejects the non-preferred parent.

Lund regards this as one of the most important benefits of PAS (30). In their study, Clawar and Rivlin determined that 80 percent of the children in their sample wanted the brainwashing detected and terminated, and there was often a substantial difference between children's expressed opinions and their real desires, needs and behaviors (29).

PAS UNDER DAUBERT

The U.S. Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (53) provided a non-exclusive list of criteria for federal courts to consider in judging the admissibility of scientific expert testimony. Subsequent decisions, such as the Supreme Court cases of *General*

Electric Co. v. Joiner (54) and *Kuhmo Tire Co. v. Carmichael* (55), and the Texas Supreme Court cases of *E.L du Pont Nemours and Co. v. Robinson* (56) and *Gammill v. Jack Williams Chevrolet, Inc.* (57) have built upon the principles of the *Daubert* analysis.

The application and significance of *Daubert*to mental health expert testimony is the subject of considerable speculation. Some commentators suggest that the *Daubert* decision spells the end of psychological and psychiatric testimony (58). This has not occurred. Slobogin sees little impact of *Daubert* on psychological testimony in criminal cases, including the admissibility of battered women and rape trauma syndrome evidence (59). In custody cases it is not clear whether trial court judges are using *Daubert*criteria to evaluate expert testimony on the best interest of a particular child (60).

Shuman and Sales note the difficulty of applying *Daubert's*pragmatic considerations, developed for scientific testimony, to clinical testimony (61). These authors suggest that when clinically based testimony is proffered, courts "are limited to judging the qualifications of the experts and the acceptability of that testimony to other similar practitioners, resulting in nearly identical pre- and post-*Daubert* admissibility decisions" (61; p. 10). General acceptance in the relevant scientific community is one of the *Daubert* factors and is the familiar criterion originated in *Frye v. United States*for science- based testimony (62). Many courts, though, exempt psychological syndrome testimony from a *Frye*analysis (59). With respect to syndrome testimony in criminal trials, Slobogin argues for a formulation of the *Frye* test that would admit testimony "that a sizeable group of professionals find plausible, based on their specialized knowledge" (59; p. 113). PAS would pass this test. Indeed, it already has (63). There is another index of the general acceptance of PAS in addition to the growing professional literature on PAS in peer-review journals. The American Psychological Association concludes its Guidelines for Child Custody Evaluations in Divorce Proceedings with a highly selective reference section titled "Pertinent Literature" (64). Three of the 39 references are books by Gardner; one is titled "The Parental Alienation Syndrome" and the other two include discussions about PAS. This could be taken to imply APA recognition of PAS as pertinent to child custody proceedings.

Zervopoulos draws on post-*Daubert* decisions to offer two guides for assessing the reliability of testimony that does not seem to fit the *Daubert* criteria (65). His analysis may be applicable to syndrome testimony. The first guide he refers to as "the applicable professional standards test" citing the decision in *Gammill*, which in turn quotes from *Watkins v. Telmith, Inc.*(66): "The court should assure that the opinion comports with applicable professional standards outside the courtroom and that it 'will have a reliable basis in the knowledge and experience of [the] discipline'" (57; pp. 725-726). Proffering PAS testimony under the "applicable professional standards test" might involve introducing the wide body of clinical literature regarding alienated children, and the similar observations noted in the various clinical reports.

The second guide is "the analytical gap test," drawing on the *Joiner* decision: "(N)othing in either *Daubert* or the *Federal Rules of Evidence*requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit*of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered" (54; p. 146). Zervopoulos explains how the "analytical gap test" might apply to syndrome testimony: "If elements of the proposed syndrome can be supported by research, those elements should pass muster under a *Daubert/Robinson/Gammill* analysis" (65). A similar approach is suggested by Shuman and Sales, "*Kuhmo Tire*and *Daubert*probably will raise the level of scrutiny given to the proffers of clinical information to determine if there is science that could have been used by the clinician" (61; p. 10).

Applying this type of analysis to PAS, one could bridge the "analytic gap" with the literature on

stereotype induction and on children's suggestibility (49). An element of PAS is the persuasive influence of the alienating parent which results in a child forming an unwarranted negative opinion of the other parent. This element is supported by the literature on stereotype induction which demonstrates how children can be manipulated to form negative stereotypes and will subsequently confabulate stories about bad things the target person has done (49). Gould makes a similar point: "If parent-child verbal exchanges in alienating families can be construed as a form of suggestive interviewing, then the evaluator may attempt to identify how the parent has used specific suggestive interview techniques to alter the child's perception of his or her father or mother" (67; p. 173).

PAS AND PEER REVIEW

One of the *Daubert* factors, and a key means of satisfying *Frye*'s general acceptance test, is whether the science has been subjected to peer review. The meaning and legal significance of peer review of clinical publications is debatable (61). But, it would seem fairly straightforward to determine whether or not PAS passes this criterion. Not so. Some critics imply that PAS has not passed standards of peer review because Gardner's books on parental alienation are published by his own press (5, 6, 8). These critics also discount the peer-review status of some of Gardner's published articles on the subject and imply that none of his work on PAS has passed peer review. These same critics omit from their analyses the many peer-reviewed publications on PAS by authors other than Gardner. An examination of the entire literature on PAS fails to support the contention that PAS has not passed peer review, and in fact strongly supports the opposite conclusion.

Although Gardner's books are not peer-reviewed, neither are most books. He has had eleven articles on PAS pass the peer-review process in social science publications (10, 36, 68-76), two articles in legal journals (77, 78), and one invited chapter in a prestigious psychiatric reference volume whose board of editors includes many of the world's leading experts in child psychiatry (79). Critics have tried to discount Gardner's publications in The Academy Forum, arguing mistakenly that it does not rely on peer review (6, 8); the status of his other peer-reviewed publications has not been disputed.

In addition to Gardner's work on PAS, there are currently 94 publications that focus significantly or exclusively on PAS and alienated children (14). Though some may question the value of peer review, or of the *Frye* test, as an index of the admissibility of syndrome research, there are no reasonable grounds for maintaining that PAS has not passed peer review

DOES THE PAS CONCEPT UNFAIRLY BLAME ONE PARENT FOR FAMILY DYSFUNCTION?

According to Gardner's formulation, alienated parents are innocent of any behavior that justifies their children's total alienation from them. If a parent's behavior does warrant the children's alienation, this is not a case of PAS.

When a child suffers from PAS, Gardner holds the alienating parent and the child primarily responsible. Similarly, although Kelly has clearly revised her thinking on this topic, her earlier work emphasized the contributions of the aligned parent, "The most extreme identification with the parent's cause we have called an 'alignment'- a divorce-specific relationship that occurs when a parent and one or more children join in a vigorous attack on the other parent. It is the embattled parent, often the one who opposes the divorce in the first place, who initiates and fuels the alignment" (12; p. 77).

Some critics argue that Gardner's position on the etiology of PAS is incomplete, simplistic, and perhaps erroneous (6-8, 23, 25, 31). Such critics believe that the concept of PAS overemphasizes the pathological contributions of the alienating parent while overlooking other possible causes of the child's denigration and rejection of a parent. In some cases, when the author faults Gardner for not recognizing that genuine abuse, neglect, or violent behavior can cause behavior identified as PAS, the criticism clearly reflects an inadequate understanding of Gardner's formulation (6-9). Gardner recognizes that poor parental behavior can cause a child's alienation; but he reserves the label PAS for the type of alienation that is not warranted by the parent's behavior and which results from the combination of the alienating parent's influence and the child's own contributions.

As discussed earlier, other clinicians believe that Gardner's formulation overlooks the importance of family dysfunction in which neither parent can be said to be psychologically healthier than the other. Lund captures this opinion: "The PAS cases that end up in therapists' offices after a court hearing usually do not have one parent who is much more psychologically healthy than the other. From a 'Family Systems' perspective, the blame for PAS lies less with psychopathology of one parent than it does with the usually very high conflict between both parents and both parents' psychopathology" (30; p. 309). Other authors concur, "Usually, PAS is not just the work of the alienating parent.. ..It is a family dynamic in which all of the family members play a role, have their own motives, and have their own reasons for resisting the efforts of others at correction" (31).

Johnston and Roseby believe that a particular type of family dynamic is responsible for certain severe alienation cases: "Rather than seeing this syndrome as being induced in the child by an alienating parent, as Gardner does, we propose that these 'unholy alliances' are a later manifestation of the failed separation-individuation process [the process by which a child develops psychological independence from the parents] in especially vulnerable children who have been exposed to disturbed family relationships during their early years" (23; p. 202). These authors regard the child's vulnerability to the alienating parent as the most important aspect of some of these cases, rather than "conscious, pernicious brainwashing" by an angry parent.

In contrast, mental health professionals working with families involved in custody litigation often report clear evidence that the alienating parent is deliberately and knowingly manipulating the child (1, 2, 28, 29). Even when the manipulation is subtle, or outside the immediate awareness of the parent doing the manipulating, because of the power imbalance between parent and child. Clawar and Rivlin view the process as driven by the alienating parent (29). Kopetski's research supports this and she regards PAS as parental exploitation of the child (39, 40). Although Kelly and Johnston do not regard the behavior of the favored parent as necessary to create the child's irrational alienation, when such behavior is present, they too regard it as emotional abuse of the child regardless of whether the alienator consciously intends to negatively influence the child (25).

Garbarino and Scott also regard PAS as a form of psychological mistreatment of children and believe that all mistreatment of children is more likely to occur in families where the atmosphere is one of stress, tension, and aggression (80). Nicholas surveyed custody evaluators "and found significant correlations between symptoms of alienation and behaviors on the part of the alienating parent, but few links between the child's alienation and the target parent's behavior. This lends support to the position that the core problem in PAS is between the alienating parent and the child. This study, however, was merely exploratory and has a number of methodological limitations including a small sample of 21 completed surveys (81). Other studies report that target parents tend to be less disturbed than alienating parents, but these studies all relied on populations in which false accusations of sex abuse were present; these results may not

generalize to the majority of PAS cases which do not include such allegations (82-85).

A central issue in assigning responsibility for a child's unwarranted alienation is whether, absent the support of the favored parent, the child would have become alienated. If, for example, the flaws of the rejected parent would not normally result in the child's total estrangement, then it may be more accurate to describe these flaws as having played a role in the child's ambivalence rather than having caused the alienation (35). If PAS symptoms arise only after the favored parent begins to manipulate his children's affections, and the rejected parent has not altered her treatment of the children in any significant way, this increases the likelihood that the manipulations have played a key role in the alienation; other explanations, though, are possible, such as the child exhibiting a maladaptive reaction to the divorce.

Several authors have identified how other parties, such as relatives and professionals, contribute to the alienation (2, 3, 22, 25-32). These authors have drawn attention to the damage caused by psychotherapists and custody evaluators whose intervention and recommendations reflect an inadequate understanding of PAS. Such professionals may accept as valid the children's criticisms of the target parent, and thus the professional may perpetuate and foster PAS.

Different opinions about PAS etiology lead to different treatment recommendations. Some support the idea of conducting psychotherapy while allowing children to live with an alienating parent to whom they are pathologically tied (22). Others recommend placing the child with the parent who has the best potential for fostering the child's healthy psychological development (3, 33, 39, 40).

Future research should help clarify which explanation gives a better account of the genesis of unreasonable parental alienation: an emphasis on the aligned parent's behavior, or an approach which considers multiple interrelated factors without assigning priority to the behavior of any one person in the system. As our understanding of these phenomena expands, we will probably find that no one explanation can best account for every case; in some cases the contributions of the aligned parent will be paramount, while in other cases a sufficient understanding of the disturbance will require an analysis of the complex interplay of the behavior of the child, the alienated parent, and the aligned parent, along with the contributions of other people (such, a new partners, other family members, and therapists) and circumstances.

SHOULD CHILDREN BE FORCED TO SPEND TIME WITH THE TARGET PARENT?

By far the most controversial issue in the PAS literature is the recommendation of enforced access between children and their alienated parents and reduction of access between the children and the parent promulgating the alienation.

In the majority of cases of moderate PAS, Gardner recommends that the court award primary custody to the alienating parent, appoint a therapist for the family, and enforce the child's contact with the target parent through the threat and imposition (if necessary) of sanctions applied to the alienating parent (33). Such sanctions are similar to those the court would use against a parent who is in contempt for failure to pay court-ordered alimony or child support. The sanctions include a continuum from requiring the posting of a bond, fines, community service, probation, house arrest, to short-term incarceration. Some states grant courts the power to suspend a contemnor's driver's license or order public service duty. Turkat notes that the absence of such sanctions has allowed parents to interfere with visitation and flaunt court orders with impunity (86).

The goals of therapy with children suffering from moderate PAS are to foster healthy contact

with the target parent and to assist children in developing and maintaining differentiated views of their parents as opposed to polarized views of one parent as all good and the other as all bad. One way to get children involved with the rejected parent is to take the decision about contact out of the children's hands, reminding them of the possible sanctions against the preferred parent for resisting court-ordered contact, and thereby giving them an excuse to spend time with the target. The therapist also tries to help the children appreciate that their animosity has been influenced by programming which has undermined their ability to reach conclusions on the basis of their own direct experiences with the target. Some authors compare this aspect of treatment with the "deprogramming" that is used with cult victims to help counteract the effects of indoctrination (29, 33).

In some cases of moderate PAS, when the parent is more intensively programming the children and there is a high risk of the alienation becoming more severe, Gardner recommends a different legal approach. In such cases he recommends that courts consider awarding primary custody to the alienated parent and extremely restricted contact between the alienating parent and child, in order to prevent further indoctrination. Similarly, in the most severe cases of PAS (which, in Gardner's experience, comprise about 5-10 percent of all PAS cases), Gardner recommends that the court remove the children from the home of the alienating parent.

Because children with severe PAS will not generally comply with court orders, and the programming parent cannot be relied upon to facilitate contact with the target parent, and because courts are reluctant to place children with a parent they appear frightened of, Gardner recommends temporary placement of the children in a transitional site before reintegrating the children in the home of the target parent. Possible transitional sites range from least restrictive to most restrictive, depending on the amount of control necessary to ensure the children's cooperation and the alienating parent's compliance with court orders. Such sites include the home of a relative or friend, a foster home, a community shelter, or a hospital. Gardner makes a good case for the transitional program, but he has had little direct experience with it, mainly due to courts' general hesitance to implement it (3). Rand, however, describes some success with it (2).

In addition to serving as transitional sites, the threat of temporary placement in a foster home, community shelter, or juvenile detention center may induce children to cooperate with court-ordered visitation. With older children (ages 11-16) who refuse visits with the alienated parent, Gardner suggests the possibility of finding the child in contempt of court (4). This recommendation has met with the most opposition.

One author who objects to enforced visitation argued that a contempt finding for a child who refuses visitation is strictly punitive in nature and counterproductive (87). The concern is that such actions will reinforce the child's hatred of the alienated parent. Instead, this author recommends that the court examine why a child resists contact with a parent and rely on family counseling and supervised visitation as a first step in repairing the child's relationship with the alienated parent: "Instead of punishing them for their feelings, we need to work with them to help them understand the value of a relationship with their parent" (87; p. 95). Gardner, on the other hand, warns against unnecessary indulging of children's visitation refusal (3). He believes that the best way to reverse alienation is to provide a child with direct experiences which can counteract negative programming and correct the child's distorted perceptions of the target parent.

One problem with supervised visitation is the message it can send to a child: It can suggest that the child's fears of the target parent are rational and that the court agrees that the child needs some sort of protection from the alienated parent. Thus, rather than increase the child's security around that parent, it may reinforce the child's uneasiness. The AC model makes a similar point

(25).

The importance of separating the child from the alienating parent, and ensuring the child's exposure to the target parent, is consistent with treatment methods for victims of brainwashing, including prisoners of war and members of cults. Clawar and Rivlin report on the similarities between the methods used by cult leaders to control their followers and the manipulations of alienating parents (29). Brainwashing scholars have identified the victim's dependence on the programmer and isolation from the target as critical conditions for successful indoctrination. These conditions must be removed for effective deprogramming to take place.

The results of the ABA-sponsored study support a firmer approach to enforcing parent-child contact. The study reported, "One of the most powerful tools the courts have is the threat and implementation of environmental modification. Of the approximately four hundred cases we have seen where the courts have increased the contact with the target parent (and in half of these, over the objection of the children), there has been positive change in 90 percent of the relationships between the child and the target parent, including the elimination or reduction of many social-psychological, educational, and physical problems that the child presented prior to the modification" (29; p. 150).

Gardner's recent follow-up study of 99 children diagnosed with PAS found a strong association between environmental modification and reduction in PAS symptoms (76). In 22 instances, the alienated child's contact with the rejected parent was increased and contact with the alienating parent was decreased. In all 22 cases, PAS symptoms were reduced or eliminated. By contrast, only 9% of the children (7 out of 77) whose contact with the rejected parent was not increased by the court, showed a reduction in PAS symptoms. This study also provides a beginning understanding of the factors that lead alienated children to initiate their own reconciliation with the rejected parent. Further study along these lines may assist decision-makers in determining which children might not require environmental modification in order to recover from PAS. The large sample and the statistical test of significance allowed by this size sample make this an important study. Nevertheless, its limitations must be noted, chiefly that the children were not interviewed, the only informant for the follow-up was the rejected parent, and the interviews were conducted by a clinician who had formulated the hypothesis being tested.

Other treatment approaches to severe PAS have been reported in the clinical literature, but in general such approaches have met with failure. Dunne and Hedrick published a clinical study of 16 severe PAS cases (41). The court ordered a custody change and/or strict limitation of contact between the alienating parent and the children in only three of these cases. In all three cases PAS was eliminated. The other 13 cases were treated with various, less restrictive interventions, ranging from individual or conjoint therapy for the parents, therapy for the children with either the alienating parent or target parent, or the assignment of a Guardian Ad Litem. In none of these cases was the PAS eliminated. Two cases showed "some" or "minimal" improvement, nine showed no improvement, and two were worse after the interventions.

This study has significant limitations. The sample size is small. Details are not provided about the methods used to analyze clinical case material. As is typical in clinical research with small samples, no statistical analyses were conducted to document that the findings were not due to chance. Nevertheless, the 100% correspondence between elimination of severe PAS and transfer of custody does provide some evidence in support of this intervention.

Lampel analyzed clinical case studies on 18 families, out of which seven children were described as rejecting a father who had no objectively noted parental dysfunction (48). Such children could be classified as moderately to severely alienated. The therapists conceptualized the children's

rejection of the father as a phobia with hysterical features and tried two different approaches commonly used to treat phobias.

The first approach, used with six children, included individual therapy sessions with the child followed by gradually increasing times with the father both in and out of the therapist's office. Sessions were also held for the mother, both individually and jointly with the child, for the father, and for both parents and child jointly. This approach is similar to Gardner's recommended treatment for moderate PAS cases.

The second approach, used with one child, is similar to Gardner's recommendation for severe PAS. The child was placed with the father for six to eight weeks while the therapist provided individual therapy sessions for the child and parents, and joint sessions with the child and father. This child was the only one of the seven children whose symptoms reduced markedly. The children whose treatment did not include placement with the rejected father experienced results varying from minor improvement to deterioration. In three cases the treatment was regarded as a clear failure. Lampel attributed the failures to the mothers' "collusive involvement" with their children. Again, although this is a very small sample, the results support the effectiveness of placing the child with the alienated parent.

Naturally, treatment approaches to PAS will benefit from more and higher quality research. Given the limitations in the available studies, some might dismiss the current professional literature as too inadequate to serve as an authoritative guide to decisions for alienated children. But no study is free of limitations. The issue is whether the limitations render the study useless. The peer review process, though no guarantee of a study's lasting value, is designed to weed out studies whose flaws outweigh their contributions.

Courts and clinicians face decisions about alienated children on a daily basis. These decisions can draw on the best available information, while duly noting its limitations, and thereby benefit from the experience of the families reflected in the published reports. Or the decisions can ignore this information. At this point in time, all the published findings on treatment outcomes support the effectiveness of enforcing contact between the child and alienated parent and no findings oppose this policy. When all available studies point to the same conclusion, it makes sense to pay attention to that conclusion, while allowing for the possibility that the circumstances of any single case may dictate an alternative treatment approach. Indeed, an emerging consensus among mental health professionals supports the idea that "court orders for continued contact are the cornerstone for treatment" of PAS cases (30; p. 309). Similarly, Stahl refers to "general agreement" that recommendations should include "forced consistent time between the child and the alienated parent" (88; p. 6).

But no consensus has been reached on the proposal for courts to consider a transfer of custody (as opposed to enforced contact) in severe PAS cases. Some have expressed the concern that alienated children are ill-equipped to cope with the change in custody, and that they could be seriously harmed (23). Although this possibility must be entertained, if this were a likely outcome, one would expect to see reports in the professional literature; to date there is no published documentation of such harm. Some allegations that harm has resulted from custody transfer may actually be misrepresentations promulgated by embittered litigants. Nevertheless, some clinicians advise parents of severely alienated children to accept the loss of their children while maintaining hope for future reconciliation (88).

Based on their ABA-sponsored study, Clawar and Rivlin conclude, "Caution must be exercised in judging that the point of no return has been reached. We have seen numerous cases where children have been successfully deprogrammed by making radical changes in their living

arrangements—often with appropriate legal interventions" (29; p. 144). As they explain it, "There are risks incumbent in any process; however, *a decision has to be made as to what is the greater risk*. It is usually more damaging socially, psychologically, educationally, and/or physically for children to maintain beliefs, values, thoughts, and behaviors that disconnect them from one of their parents (or from telling the truth, as in a criminal case) compared to getting rid of the distortions or false statements" [emphasis in the original] (29; p. 141).

Large scale, objectively measured, long-term outcome studies on the effectiveness of different interventions with PAS have not yet been conducted. Until such scientific evidence is available, controversy will probably continue concerning the proper treatment of children and parents when PAS is present. And until more courts implement the proposed treatment recommendations, it is not likely that investigators will have large enough samples to conduct large-scale outcome studies.

CONCLUSION

The concept of parental alienation syndrome has received much attention in the professional literature, including articles appearing in peer-review journals which elaborate on Gardner's original formulations. Mental health professionals and courts agree that children can suffer estrangement from a parent following divorce that is not warranted by the history of the parent-child relationship. This observation can be useful to courts dealing with a child's visitation refusal or determining how much weight to assign a child's stated preferences regarding custody. Although empirical research is at an early stage, the available published studies support the importance of enforcing contact between a child and an alienated parent, when the child's alienation is not justified by that parent's behavior.

Controversy exists, however, in conceptualizing the problem of alienated children and in using the term PAS. Those favoring the term believe it assists in understanding and treating a well-recognized phenomenon. Those opposing the term believe that it lacks an adequate scientific foundation to be considered a syndrome and that courts should not admit testimony on PAS. Critics argue that PAS is either an unnecessary or potentially damaging label for normal divorce-related behavior, that it oversimplifies the etiology of the symptoms it subsumes, and that it may result in custody decisions which fail to promote children's welfare.

Given the volume of published references to PAS, we can expect that it will continue to be raised in custody and access litigation. Future empirical research should help resolve some of the current controversies by providing data on the reliability and validity of PAS, the effectiveness of various interventions, and the long-term course of parental alienation.

Topics for study include: 1) the ability of clinicians to reach agreement on the presence or absence of each PAS symptom and the presence or absence of PAS; 2) the factors that enable children to resist or to recover from alienation; 3) the psychological attributes of favored and rejected parents; 4) prospective studies of children who have been exposed to systematic attempts to undermine their relationship with a parent; 5) the link between unwarranted alienation and the personality and behavior of the rejected parent; 6) the incidence of unwarranted alienation in the absence of documented attempts by the favored parent to alienate; 7) comparisons of different treatment methods using adequate scientific controls, such as samples initially matched on relevant variables, raters who are kept unaware of which treatment the children received, and statistical analyses of results.

The results of such studies will yield information that should help refine and enhance our understanding of how best to help families with alienated children.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 681 **VERSION:** INTRODUCED FEBRUARY 26, 2009

AUTHOR: HERNANDEZ **SPONSOR:** CAMFT

RECOMMENDED POSITION: SUPPORT

SUBJECT: CONFIDENTIALITY OF MEDICAL INFORMATION: PSYCHOTHERAPY EXEMPTION

Existing Law:

1) Prohibits a health care provider from releasing information that specifically relates to a patient's participation in outpatient treatment with a psychotherapist unless the requester submits a written request, signed by the requester, that includes all the following information: (Civil Code § 56.104(a))

    a) The specific information relating to patient's participation in outpatient treatment and the intended use or uses of the information;

    b) The length of time during which the information will be kept before being destroyed or disposed of;

    c) A statement that the information will not be used for any other purpose other than its intended use; and,

    d) A statement that the person or entity requesting the information will destroy the information after the specified length of time.

2) Allows a psychotherapist to disclose medical information, if the psychotherapist in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (CC § 56.10(c)(19))

3) Provides that a psychotherapist is not liable to warn and protect a potential victim from a patient's violent behavior unless the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. (CC § 43.92)

4) Provides, as to admissibility of evidence, an exemption to the patient-psychotherapist privilege if the psychotherapist has reasonable cause to believe that the patient is in such a mental or emotional state as to be dangerous to himself or to the person or property of another and the disclosure is necessary to prevent the threatened disclosure. (Evidence Code §1024)

This Bill: Allows a psychotherapist to disclose information related to the patient's outpatient treatment, if the psychotherapist in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat, without a written request, as specified in current law.

Comment:

1) **Author's Intent.** According to the author, the California Confidentiality of Medical Information Act (CMIA) generally prohibits the disclosure of medical information. However, there are a number of exemptions, including the provision that allows a psychotherapist to release information on a patient that poses a serious danger to others. Moreover, under *Tarasoff v. Regents of University of California* ((1976) 17 Cal. 3d 425), the court found that a psychotherapist has a duty to exercise reasonable care to protect a foreseeable victim of danger. However, Civil Code Section 56.104 requires an elaborate and time-consuming request and notification process when a psychotherapist shares information relating to a patient's participation in outpatient treatment. In situations requiring prompt action because of a "dangerous" patient, this written request process posses a significant impediment to protecting and warning a potential victim. This bill would exempt psychotherapists from the written request for information requirement in order to allow psychotherapist to exercise their duty to warn and protect a potential victim in a timely manner.

2) **Previous Legislation.** AB 1178 (Hernandez), Chapter 506, Statutes of 2007, permitted a provider of health care to disclose medical information when a psychotherapist had reasonable cause to believe that the patient was in such a mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure was necessary to prevent the threatened danger. The Board took a support position on this legislation.

3) **Support and Opposition.**
Support: CAMFT (sponsor)

Opposition: None on file

4) **History**
2009
Feb. 27 From printer. May be heard in committee March 29.
Feb. 26 Read first time. To print.

ASSEMBLY BILL No. 681

Introduced by Assembly Member Hernandez

February 26, 2009

An act to amend Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as introduced, Hernandez. Confidentiality of medical information: psychotherapy.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient.

This bill would also except from those provisions disclosures that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56.104 of the Civil Code is amended to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, except as authorized in paragraph (1) *and paragraph (19)* of subdivision (c) of Section 56.10, no provider of health care, health care service plan, or contractor may release medical information to persons or entities authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010

of the Evidence Code and a "provider of health care" as defined in subdivision (i) of Section 56.05.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient's consent.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1113 **VERSION:** INTRODUCED FEBRUARY 27, 2009

AUTHOR: BONNIE LOWENTHAL **SPONSOR:** CAMFT

RECOMMENDED POSITION: SUPPORT

SUBJECT: DEPARTMENT OF CORRECTIONS AND REHABILITATION: MARRIAGE AND FAMILY THERAPIST INTERN EXPERIENCE

Existing Law:

1) Requires any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system to be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state, with specified exemptions. (PC §5068.5(a))

2) Exempts from the licensure requirement for mental health practitioners employed with the state correctional system, persons employed as psychologists or persons employed to supervise or provide consultation on the diagnostic or treatment services, as of specified dates, as long as they continue in employment in the same class and in the same department. (PC §5068.5(b))

3) Allows licensure requirements for mental health practitioners employed with the state correctional system to be waived for a person to gain qualifying experience for licensure as a psychologist or clinical social worker. (PC §5068.5(c))

This Bill: Allows licensure requirements for mental health practitioners employed with the state correctional system to be waived for a person to gain qualifying experience for licensure as a marriage and family therapist. (PC §5068.5(c))

Comment:

1) **Author's Intent.** Marriage and family therapists currently provide mental health services in state facilities. While the current law governing correctional facilities allows a waiver of the licensure requirements for trainees in psychology and clinic social work, the waiver does not currently extend to MFT trainees. According to the author's office, this waiver should also apply to MFTs, "whose training and education are comparable to LCSWs."

2) **Background.** The California Department of Corrections and Rehabilitation is suffering from a severe shortage of mental health programs throughout the State. According to the author, the Division of Correctional Health Care Services recommends proposing a new classification for MFTs within Corrections to allow MFTs to apply and be considered in the hiring process, thereby increasing the candidate pool, ultimately decreasing vacancies in this classification.

3) **Previous Legislation and Board Action.** Identical legislation was introduced last year, AB 2652 (Anderson). The Board's Policy and Advocacy Committee recommended to the Board to support this legislation, however, the bill was no longer viable at the time the Board considered a position on the bill, and therefore no formal position was adopted by the Board.

4) **Support and Opposition.**
Support: CAMFT (sponsor)

Opposition: None on file

5) **History**

2009

Mar. 2	Read first time.
Mar. 1	From printer. May be heard in committee March 30.
Feb. 27	Introduced. To print.

ASSEMBLY BILL No. 1113

Introduced by Assembly Member Bonnie Lowenthal (Principal coauthor: Assembly Member Anderson)

February 27, 2009

An act to amend Section 5068.5 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1113, as introduced, Bonnie Lowenthal. Prisoners: professional mental health providers: marriage and family therapists.

Existing law requires any person employed or under contract to provide mental health diagnostic or treatment or other mental health services in the state correctional system to be a physician and surgeon, psychologist, or other health professional, licensed to practice in this state, except as specified. This licensure requirement may be waived in order for a person to gain qualifying experience for licensure as a psychologist or clinical social worker in this state.

This bill would also authorize the waiver for a person to gain qualifying experience for licensure as a marriage and family therapist. The bill would provide that a person gaining qualifying experience for licensure as a marriage and family therapist is limited to working within his or her scope of practice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 5068.5 of the Penal Code is amended to read:

5068.5. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

(b) Notwithstanding Section 5068 or Section 704 of the Welfare and Institutions Code, the following persons are exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the same department:

(1) Persons employed on January 1, 1985, as psychologists to provide diagnostic or treatment services including those persons on authorized leave but not including intermittent personnel.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment services including persons on authorized leave but not including intermittent personnel.

(c) The requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a ~~psychologist or~~ *psychologist,* clinical social ~~worker~~ *worker, or marriage and family therapist* in this state in accordance with Section 1277 of the Health and Safety Code. *A person gaining qualifying experience for licensure as a marriage and family therapist is limited to working within his or her scope of practice.*

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1310 **VERSION:** AMENDED: APRIL 2, 2009

AUTHOR: HERNANDEZ **SPONSOR:**

RECOMMENDED POSITION: OPPOSE UNLESS AMENDED

SUBJECT: DATA SURVEY REQUIREMENT FOR HEALING ARTS BOARDS

Existing Law:

1. Establishes within the Office of Statewide Health Planning and Development (OSHPD) the Health Care Workforce Clearinghouse, which is responsible for the collection analysis, and distribution of information on the educational and employment trends for health care occupations in the state. (Health and Safety Code § 128050)

2. Requires OSHPD to work with the Employment Development Department's (EDD) Labor Market Information Division state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:

   (a) The current supply of health care workers, by specialty.
   (b) The geographical distribution of health care workers, by specialty.
   (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.
   (d) The current and forecasted demand for health care workers, by specialty.
   (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study. (Health and Safety Code § 128051)

3. Requires OSHPD to prepare an annual report to the California State Legislature that does all of the following:

   (a) Identifies education and employment trends in the health care profession.
   (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.
   (c) Recommends state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code § 128052)

This Bill:

1. Requires specific healing arts boards in the Department of Consumer Affairs (DCA) to add and label as "mandatory" certain fields on an application for initial licensure or renewal. These fields include:

   a) First name, middle name, and last name.

b) Last four digits of social security number.
c) Complete mailing address.
d) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
e) Birth date and place of birth.
f) Sex.
g) Race and ethnicity.
h) Location of high school.
i) Mailing address of primary practice, if applicable.
j) Number of hours per week spent at primary practice location, if applicable.
k) Description of primary practice setting, if applicable.
l) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.
m) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county. (Business and Professions Code § 857 (a))

2. Requires DCA, in consultation with OSHPD's Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, to select a database to store the information. The data shall be submitted to the Health Care Workforce Clearinghouse annually on or before January 1. (Business and Professions Code § 857(b) and (d)(1))

3. Requires the Health Care Workforce Clearinghouse to prepare a written report based on the findings of the data no later than March 1 of any year, beginning March 1, 2012. (Business and Professions Code § 857(d)(2))

4. The following boards would be subject to the previsions of this bill:
    a. The Acupuncture Board
    b. The Dental Hygiene Committee of California
    c. The Dental Board of California
    d. The Medical Board of California
    e. The Bureau of Naturopathic Medicine
    f. The California Board of Occupational Therapy
    g. The State Board of Optometry
    h. The Osteopathic Medical Board of California
    i. The California State Board of Pharmacy
    j. The Physical Therapy Board of California
    k. The Physician Assistant Committee, Medical Board of California
    l. The California Board of Podiatric Medicine
    m. The Board of Psychology
    n. The Board of Registered Nursing
    o. The Respiratory Care Board of California
    p. The Speech-Language Pathology and Audiology Board
    q. The Board of Vocational Nursing and Psychiatric Technicians of the State of California (Business and Professions Code § 857(c))

Comment:

1) Author's Intent. According to the author, this bill will provide OSHPD and the Health Care Workforce Clearinghouse with the information it needs to carry out its requirements set forth in statute.

Policy Issues

2) Status of the Health Care Workforce Clearinghouse: According to the OSHPD Web site, the Clearinghouse is still in its early development stages. A review of past OSHPD focus group meetings relating to the creation of the database revealed a tentative development period of 18-24 months.

A centralized and accessible database will facilitate an increase in research and policy analysis relating to health care workforce trends. Currently, a research gap exists in the study of workforce trends for some health care professions, including marriage and family therapists and clinical social workers.

3) Absence of the Board of Behavioral Sciences (BBS): The bill's current language does not include the BBS. The author's staff indicates this was an oversight, and the BBS will be included in an amended version of the bill.

4) Necessity of Regulation Changes: The content of some BBS forms is outlined in regulation; thus, a change to some forms would require a regulation change, which is typically a lengthy process.

Administrative Issues

5) **Overlap with Current Procedures:** The BBS already tracks some of the proposed mandatory fields:

- First name, middle name, and last name.
- Last four digits of social security number.
- Complete mailing address.
- Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
- Birth date

6) Technology Issues: The databases currently used to track information related to applicants, registrants, and licensees are not equipped to capture all the proposed mandatory fields. Revisions to existing technology would need to be altered to capture the following fields:

- Place of birth.
- Gender.
- Ethnicity.
- Location of high school.
- Mailing address of primary practice, if applicable.
- Description of primary practice setting, if applicable.
- Number of hours per week spent at primary practice location, if applicable.
- Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP code, and county.
- Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP code, and county.

7) Implementation Date Ambiguity: The bill requires DCA to submit the collected data to the Health Care Workforce Clearinghouse annually on or before January 1. If this date refers to

January 1, 2011, DCA would likely not be able to get the necessary technology in place to capture such data and provide it to the Health Care Workforce Clearinghouse in this implied timeframe.

8) **Cost Concerns:** If required to significantly change or update current technology to capture the mandatory fields, the BBS may incur substantial cost.

9) Relevant Data Collection: The bill is specific as to what methods each board will use to collect the data, specifically initial licensure applications and renewals. Depending on the board, the initial licensure application period might not be the point at which it makes sense to obtain this information. For example, in the case of the BBS, obtaining this information at the point of registration is more appropriate. Furthermore, some of the identified fields will change for an individual over time (e.g. primary practice location).

10) Collection of Data via License Renewal: Requiring this information as a condition of renewal, as implied by the bill, will likely significantly increase the number of incomplete renewals received. This will increase renewal processing time and staff workload.

11) Similarities to other Legislation: The intent of this bill to support the implementation of the Health Care Workforce Clearinghouse is similar to SB 43 (Alquist).

12) Suggested Amendments: A functioning data clearinghouse that assists policy makers in making more informed decisions would be a valuable resource for policy analysts, decision makers, and researchers, but this bill needs significant amendment to succeed upon implementation.

Staff recommends using language similar to what is included in SB 43 (Alquist) in including a definition of "board" as any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to Division 2 (Healing Arts) of the Business and Professions Code. Finally, mandating the collection of this information on an initial license or renewal application limits the discretion of the board. In some instances, obtaining the information on an initial license application or renewal might not make sense. Staff suggests altering the language to provide the board with some level of discretion as to the method of collecting the data. (Please see Attachment for suggested changes to language in the context of the bill.)

Finally, staff feels the implied requirement to submit data to the Health Care Workforce Clearinghouse annually beginning on January 1, 2011 is unrealistic given the changes to applications and potential database construction/revision needed. In staff's opinion, such changes can require significant time and resources. Before including such a deadline in the bill, staff suggests consulting with the Office of Information Services at the DCA to assess the necessity for technology changes, and if needed, how long it would take to implement the needed changes.

13) Support and Opposition.
Support: None on file.
Opposition: None on file.

14) History
Apr. 2 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
Mar. 31 Referred to Com. on B. & P.
Mar. 2 Read first time.

Mar. 1 From printer. May be heard in committee March 30.
Feb. 27 Introduced. To print.

ATTACHMENT
Proposed amended language

Proposed amended language

An act to add Section 857 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as introduced, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require the specified healing arts boards to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to those boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 857 is added to the Business and Professions Code, to read:

857. (a) ~~Every healing arts board specified in subdivision (c)~~ A healing arts board referred in this division shall add and label as "mandatory" the following fields on ~~an application for initial licensure~~ an application for licensure, certification, registration, ~~or~~ renewal, and/or other forms or applications as designated by the board ~~for a person applying to that board~~:

(1) First name, middle name, and last name.
(2) Last four digits of social security number.
(3) Complete mailing address.
(4) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
(5) Birth date and place of birth.
(6) Sex.
(7) Race and ethnicity.
(8) Location of high school.
(9) Mailing address of primary practice, if applicable.
(10) Number of hours per week spent at primary practice location, if applicable.
(11) Description of primary practice setting, if applicable.
(12) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.

(13) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county.

(b) The ~~department~~ board, in consultation with the Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, shall select a database and shall add the data specified in paragraphs (5) to (13) ~~inclusive, of subdivision (a) to that database~~.

~~(c) The following boards are subject to subdivision (a):~~
~~(1) The Acupuncture Board.~~
~~(2) The Dental Hygiene Committee of California.~~
~~(3) The Dental Board of California.~~
~~(4) The Medical Board of California.~~
~~(5) The Bureau of Naturopathic Medicine.~~
~~(6) The California Board of Occupational Therapy.~~
~~(7) The State Board of Optometry.~~
~~(8) The Osteopathic Medical Board of California.~~
~~(9) The California State Board of Pharmacy.~~
~~(10) The Physical Therapy Board of California.~~
~~(11) The Physician Assistant Committee, Medical Board of California.~~
~~(12) The California Board of Podiatric Medicine.~~
~~(13) The Board of Psychology.~~
~~(14) The Board of Registered Nursing.~~
~~(15) The Respiratory Care Board of California.~~
~~(16) The Speech-Language Pathology and Audiology Board.~~
~~(17) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(d)~~ (c)(1) The department shall collect the specified data in the database pursuant to subdivision (b) and shall submit that data to Health Care Workforce Clearinghouse annually on or before January 1.

(2) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.

(d) For purposes of this section, "board" refers to any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to this division.

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AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1310

Introduced by Assembly Member Hernandez

February 27, 2009

An act to add Section 857 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require ~~the department~~ *specified healing arts boards* to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to ~~specified healing arts~~ *those* boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse

annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 857 is added to the Business and Professions Code, to read:

857. (a) ~~The department~~ *Every healing arts board specified in subdivision (c)* shall add and label as "mandatory" the following fields on an application for initial licensure or renewal for a person applying to ~~a board described in subdivision (c)~~ *that board*:

(1) First name, middle name, and last name.

(2) Last four digits of social security number.

(3) Complete mailing address.

(4) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.

(5) Birth date and place of birth.

(6) Sex.

(7) Race and ethnicity.

(8) Location of high school.

(9) Mailing address of primary practice, if applicable.

(10) Number of hours per week spent at primary practice location, if applicable.

(11) Description of primary practice setting, if applicable.

(12) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.

(13) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county.

(b) The department, in consultation with the Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, shall select a database and shall add the data

specified in paragraphs (5) to (13) ~~of subdivision (a), inclusive,~~, *inclusive, of subdivision (a)* to that database.

(c) The following boards are subject to subdivision (a):

(1) The Acupuncture Board.

(2) The Dental Hygiene Committee of California.

(3) The Dental Board of California.

(4) The Medical Board of California.

(5) The Bureau of Naturopathic Medicine.

(6) The California Board of Occupational Therapy.

(7) The State Board of Optometry.

(8) The Osteopathic Medical Board of California.

(9) The California State Board of Pharmacy.

(10) The Physical Therapy Board of California.

(11) The Physician Assistant Committee, Medical Board of California.

(12) The California Board of Podiatric Medicine.

(13) The Board of Psychology.

(14) The Board of Registered Nursing.

(15) The Respiratory Care Board of California.

(16) The Speech-Language Pathology and Audiology Board.

(17) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(d) (1) The department shall collect the specified data in the database pursuant to subdivision (b) and shall submit that data to Health Care Workforce Clearinghouse annually on or before January 1.

(2) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 43 **VERSION:** INTRODUCED: JANUARY 6, 2009

AUTHOR: ALQUIST **SPONSOR:**

RECOMMENDED POSITION: SUPPORT

SUBJECT: IMPROVING HEALTHCARE WORKFORCE AND EDUCATION DATA

Existing Law:

1. Establishes within the Office of Statewide Health Planning and Development (OSHPD) the Health Care Workforce Clearinghouse, which is responsible for the collection analysis, and distribution of information on the educational and employment trends for health care occupations in the state. (Health and Safety Code § 128050)

2. Requires OSHPD to work with the Employment Development Department's (EDD) Labor Market Information Division state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:

   (a) The current supply of health care workers, by specialty.

   (b) The geographical distribution of health care workers, by specialty.

   (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.

   (d) The current and forecasted demand for health care workers, by specialty.

   (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study. (Health and Safety Code § 128051)

3. Requires OSHPD to prepare an annual report to the California State Legislature that does all of the following:

   (a) Identifies education and employment trends in the health care profession.

   (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.

   (c) Recommends state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code § 128052)

This Bill:

1. Enables OSHPD to obtain labor market, workforce, and earnings data from EDD. The data will be used for the purposes of the Health Care Workforce Clearinghouse. (Unemployment and Insurance Code § 1095)

2. Authorizes healing arts boards, which includes the Board of Behavioral Sciences (BBS), to, in a manner deemed appropriate by the board, collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation under the board. Personally identifiable information collected pursuant to this section shall be confidential and not subject to public inspection. (Business and Professions Code § 851.5)

Comment:

1) Author's Intent. According to the author, this bill will improve data available for workforce policy and development efforts. This bill will ensure that OSHPD can fully implement the Health Care Workforce Clearinghouse with the most relevant data available.

2) Status of the Health Care Workforce Clearinghouse: According to the OSHPD Web site, the Clearinghouse is still in its early development stages. A review of notes from past OSHPD focus group meetings relating to the creation of the database revealed a tentative development period of 18-24 months.

3) Necessity of Including Cultural and Linguistic Information in Database: While the reporting of cultural and linguistic competencies might make some individuals uncomfortable, many academic studies related to workforce trends in the health care professions document significant relationships for explanatory factors relating to ethnicity and culture. From the perspective of a researcher or policy analyst using data, accessibility to cultural and linguistic data, greatly improves the probability of valid and useful conclusions. Any concern relating to the reporting of this data should be mediated by the bill's stated mandate that all personally identifiable information collected shall be confidential.

4) Prior BBS Demographic Research: In 2006, the BBS implemented a voluntary demographic survey to its licensees and registrants. The results of the survey are available on the BBS Web site.

5) Implementation Concerns: While the bill merely authorizes collection of this data, should any board choose to begin capturing this data, changes to existing technology, specifically the Applicant Tracking System and Consumer Affairs System databases, would be necessary. Such changes can be time consuming, but since the bill does not include a deadline nor mandate collection of the data, the BBS would not be at risk of non-compliance should the bill become law.

6) Authorization vs. Mandate: This bill *authorizes* healing arts boards to collect cultural and linguistic competencies. In order to collect this information, the BBS may need to hire additional staff and upgrade current technology. Since the bill does not *require* the BBS to obtain this information, justifying an increase in spending authority could be a challenge.

7) Similarities to other Legislation: The intent of this bill to support the implementation of the Health Care Workforce Clearinghouse is similar to AB 1310 (Hernandez).

8) Support and Opposition.
Support: None on file.
Opposition: None on file.

9) History
2009
Jan. 29 To Coms. on B., P. & E.D. and JUD.
Jan. 7 From print. May be acted upon on or after February 6.
Jan. 6 Introduced. Read first time. To Com. on RLS. for assignment. print.

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SENATE BILL No. 43

Introduced by Senator Alquist

January 6, 2009

An act to add Section 851.5 to the Business and Professions Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to health professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 43, as introduced, Alquist. Health professions.

Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Existing law establishes the Task Force on Culturally and Linguistically Competent Physicians and Dentists and assigns the task force various duties, including, among other things, identifying the key cultural elements necessary to meet cultural competency. Existing law authorizes physicians and surgeons, dentists, and dental auxiliaries to report information regarding their cultural background and foreign language proficiency to their respective licensing boards and requires those boards to collect that information, as specified.

This bill would authorize the healing arts boards, as defined, to collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation by those boards. The bill would require that this information be used for the purpose of meeting the cultural and linguistic concerns of the state's diverse patient population.

Existing law requires the Office of Statewide Health Planning and Development to establish a health care workforce clearinghouse to serve as the central source of health care workforce and educational data in the state. Existing law requires the Director of the Employment

Development Department to permit the use of information in his or her possession for specified purposes.

This bill would additionally require the director to permit the use of that information in order to enable the Office of Statewide Health Planning and Development to obtain specified data for the health care workforce clearinghouse.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 851.5 is added to the Business and Professions Code, to read:

851.5. (a) A healing arts board referred to in this division may, in a manner deemed appropriate by the board, collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation by that board.

(b) The information collected pursuant to this section shall be used for the purpose of meeting the cultural and linguistic concerns of the state's diverse patient population.

(c) Personally identifiable information collected pursuant to this section shall be confidential and not subject to public inspection.

(d) The authority provided in this section shall be in addition to, and not a limitation on, the authority provided under subdivision (c) of Section 2425.3 and subdivision (d) of Section 1717.5.

(e) For purposes of this section, "board" refers to any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to this division.

SEC. 2. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and

when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or

administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation

of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigation and requests this information in the course of and as part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(y) To enable the Chancellor of the California Community Colleges, in accordance with the requirements of Section 84754.5 of the Education Code, to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and the Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

(z) To enable the Public Employees' Retirement System to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, benefits provided under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

(aa) To enable the Office of Statewide Health Planning and Development to obtain labor market, workforce, and earnings data for the purpose of collecting health care workforce data for the health care workforce clearinghouse established pursuant to Section 128050 of the Health and Safety Code.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Section 851.5 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of healing arts licensees, it is necessary to ensure that personally identifiable information submitted by licensees pursuant to this act is protected as confidential.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 296 **VERSION:** INTRODUCED FEBRUARY 25, 2009

AUTHOR: LOWENTHAL **SPONSOR:** CAMFT AND CSCSW

RECOMMENDED POSITION: NONE

SUBJECT: MENTAL HEALTH SERVICES

Existing Law:

1) Requires health care service plan contracts and disability insurance policies which cover hospital, medical, or surgical benefits to provide coverage for the following under the same terms and conditions as other medical conditions beginning July 1, 2000: (HSC § 1374.72(a), IC § 10144.5(a))

2) A health care service plan, other than a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall file a written continuity of care policy as a material modification with the department before March 31, 2004. (HSC § 1373.95(a)(1))

3) The health care service plan, including a specialized healthcare service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee. (HSC § 1373.95(c))

This Bill:

1) Makes the following legislative findings and declarations: (HSC § 1367.27)

   a) The coordination of care between mental health care providers and general physical health care providers is necessary to optimize the overall health of the patient; and,

   b) Every health care plan that offers professional mental health services, including a specialized health care service plan that offers those services, shall direct those services to be provided in a manner that ensures coordination of benefits between mental health care providers and general physical health care providers.

2) Requires every health care service plan that offers professional mental health services, including a specialized health care service plan that offers those services, to establish an internet Web site for the purpose of to provide consumers, patient, and provider access to plan procedures, policies, and network provider information. (HSC § 1367.28(a))

3) Requires health care service plans subject to this bill to include on its web site, at a minimum, the plan's policies and procedures related to a number of current disclosure

requirements in law, including, but not limited to, information on benefits, reimbursements claims, grievance claims and continuity of care. This information must be updated at least every month. (HSC § 1367.28(b) and (c))

4) Requires the Department of managed Health Care to establish minimum standards and guidelines for plan web sites pursuant to this bill.

5) Requires health care service plans subject to this bill, to issue a benefits card to each enrollee for assistance with mental health benefits coverage information. The benefits cards must include all of the following information:

   a) The name of the benefit administrator or health care service plan issuing the card, which shall be displayed on the front side of the card.

   b) The enrollee's identification number, or the subscriber's identification number when the enrollee is a dependent who accesses services using the subscriber's identification number. The numbers hall be displayed on the front side of the card

   c) A telephone number that enrollees may call 24 hours a day, seven days a week, for assistance regarding health benefits coverage information, in-network provider access information, and claims processing.

   d) A brief statement indicating that enrollees may call the telephone number for assistance regarding mental health services and coverage.

   e) Preauthorization restrictions or requirements.

   f) Information required by the benefits administrator or health care service plan that is necessary to commence processing a claim

6) Prohibits a health care service plan from printing any of the following information on the benefits card described in this bill:

   a) Any information that may result in fraudulent use of the card.

   b) Any information that is otherwise prohibited from being included on the card.

Comment:

1) Author's Intent. According to the author's office, SB 296 is necessary to improve access to mental health service. In 2005 the Department of Mental Health released a report discussing the reasoning behind the continued barriers to parity. The report found that although there had been some improvement in access to care "there still appear[ed] to be confusion about procedures for learning about benefits, obtaining prior authorization, and accessing mental health services, particularly in crisis and urgent situations." The report further noted barriers such as: "Prior authorization procedures required by many plans are reported to be complicated and burdensome;" "Continuity issues, although improving, still arise when plans change or drop providers;" "Many health plans' [grievance and appeal] procedures are complex and difficult for individuals or families dealing with serious mental health conditions to negotiate;" and, that the "lack of access to qualified and appropriate providers is perhaps the largest barrier to making mental health parity successful," citing examples of several month wait times, insufficient practitioners per geographical location,

and “phantom panels.”

2) Support and Opposition.

Support: California Association of Marriage and Family Therapists (Sponsor)
California Society for Clinical Social Workers (Sponsor)

Opposition: None on file.

3) History

2009

Mar. 9	To Com. on HEALTH.
Feb. 26	From print. May be acted upon on or after March 28.
Feb. 25	Introduced. Read first time. To Com. on RLS. for assignment. To print.

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SENATE BILL No. 296

Introduced by Senator Lowenthal

February 25, 2009

An act to add Sections 1367.27, 1367.28, and 1367.29 to the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as introduced, Lowenthal. Mental health services.

Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of provisions governing health care service plans is a crime. Existing law imposes certain requirements on health care service plans and specialized health care service plans that provide coverage for professional mental health services.

This bill would require every health care service plan, including a specialized health care service plan, that offers professional mental health services to direct those services to be provided in a manner that ensures coordination of benefits between all mental health care providers and general physical health care providers. The bill would require these plans to establish an Internet Web site conforming to minimum standards and guidelines established by the department by an unspecified date, and to issue a benefits card to enrollees with specified information.

By imposing new requirements on certain health care service plans, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1367.27 is added to the Health and Safety Code, to read:

1367.27. (a) The Legislature finds and declares that coordination of care between mental health care providers and general physical health care providers is necessary to optimize the overall health of a patient.

(b) Every health care service plan that offers professional mental health services, including a specialized health care service plan that offers those services, shall direct those services to be provided in a manner that ensures coordination of benefits between mental health care providers and general physical health care providers.

SEC. 2. Section 1367.28 is added to the Health and Safety Code, to read:

1367.28. (a) On or before January 1, ____, every health care service plan that offers professional mental health services, including a specialized health care service plan that offers those services, shall establish a plan Internet Web site. The purpose of the plan Internet Web site shall be to provide consumer, patient, and provider access to plan procedures, policies, and network provider information.

(b) Each Internet Web site shall, at a minimum, include the plan's policies and procedures identified in Sections 1363, 1363.5, 1367.01, 1367.23, 1367.26, 1368.015, 1371, 1371.8, 1373.95, 1374.30, and 1380.

(c) The material described in subdivision (b) shall be updated at least every month.

(d) On or before January 1, ____, the department shall establish minimum standards and guidelines for plan Internet Web sites, after consultation with stakeholder groups, including, but not limited to, individual, group, and institutional providers and consumer protection groups. The minimum standards shall be implemented by plans on or before January 1, ____.

(e) The department shall include on the department's Internet Web site a link to each plan Internet Web site.

SEC. 3. Section 1367.29 is added to the Health and Safety Code, to read:

1367.29. (a) Every health care service plan that offers professional mental health services, including a specialized health care service plan that offers those services, shall issue a benefits card to each enrollee for assistance with mental health benefits coverage information, in-network provider access information, and claims processing purposes. The benefits card, at a minimum, shall include all of the following information:

(1) The name of the benefit administrator or health care service plan issuing the card, which shall be displayed on the front side of the card.

(2) The enrollee's identification number, or the subscriber's identification number when the enrollee is a dependent who accesses services using the subscriber's identification number. The number shall be displayed on the front side of the card.

(3) A telephone number that enrollees may call 24 hours a day, seven days a week, for assistance regarding health benefits coverage information, in-network provider access information, and claims processing.

(4) A brief statement indicating that enrollees may call the telephone number for assistance regarding mental health services and coverage.

(5) Preauthorization restrictions or requirements.

(6) Information required by the benefits administrator or health care service plan that is necessary to commence processing a claim, except as otherwise provided in subdivision (b).

(b) A health care service plan shall not print any of the following information on the benefits card:

(1) Any information that may result in fraudulent use of the card.

(2) Any information that is otherwise prohibited from being included on the card.

(c) On and after July 1, ___, the benefits card required by this section shall be issued by a health care service plan or a specialized health care service plan to an enrollee upon enrollment or upon any change in the enrollee's coverage that impacts the data content or format of the card.

(d) Nothing in this section requires a health care service plan to issue a separate benefits card for mental health coverage if the

plan issues a card for health care coverage in general and the card provides the information required by this section.

(e) If a specialized health care service plan delegates responsibility for issuing the benefits card to a contractor or agent, then the contract between the plan and its contractor or agent shall require compliance with this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 389 **VERSION:** INTRODUCED FEBRUARY 26, 2009

AUTHOR: NEGRETE MCLEOD **SPONSOR:** AUTHOR

RECOMMENDED POSITION: OPPOSE UNLESS AMENDED

SUBJECT: FINGERPRINT SUBMISSION

Existing Law:

1) Requires specified agencies, including the Board, to require applicants to furnish a full set of fingerprints for the purpose of conducting criminal history record checks. (Business and Professions Code §144)

2) Allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI). (BPC §144)

3) Allows the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. (BPC 4982(a), 4989.54(a) and 4992.3(a))

4) Requires a licensee upon renewal to notify the Board whether he or she has been convicted of a misdemeanor or a felony. (BPC §4996.6)

This Bill:

1) States that specified Boards under the Department of Consumer Affairs (DCA) shall requires applicants for licensure to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice (DOJ). (BPC §144(a) and (b))

2) Requires specified boards to direct applicants for a license and renewal to submit to DOJ fingerprints for the purpose of obtaining information as to the existence and content of a state or federal criminal record. (BPC §144(c) and BPC §144.5(d))

3) Requires DOJ to charge a fee sufficient to cover the cost of processing the criminal record search pursuant to this bill. (BPC §144(c) and BPC §144.5(d))

4) States that specified agencies shall require a licensee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, successfully complete a state and federal level criminal offender record information search conducted through DOJ. (BPC §144.5(a))

5) Requires a licensee subject to the fingerprint submission requirements upon renewal to certify on the renewal application that he or she has successfully complete a state and federal level criminal offender record information search. (BPC §144.5(b)(1))

6) Requires a licensee subject to the licensure renewal provisions of this bill to retain for at least three years, either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ or a receipt evidencing that the licensee's fingerprints were taken. (BPC §144.5(b)(2))

7) Makes failure to certify the successful completion of a criminal offender record information search renders an application for renewal incomplete and prohibits an agency from renewing the license until a complete application is submitted. (BPC §144.5(c))

8) Allows an agency to waive the license renewal requirements contained in this bill if a license is inactive or retired, or if the licensee is actively serving in the military. (BPC §144.5(e))

9) Makes a licensee who falsely certifies completion of a state and federal level criminal record information search may be subject to disciplinary action by the Board. (BPC §144.5(f))

10) Requires specified boards to require a licensee, as a condition of renewal, to notify the respective board of any felony or misdemeanor since his or her last renewal. (BPC §144.6(a))

11) Makes the provisions related to fingerprint submission as a condition of Licensure renewal operative on January 1, 2011. (BPC §144.5(h))

12) Deletes related obsolete language. (BPC §144(c))

Comment:

1) Author's Intent. According to the Author's office, the purpose of this legislation is to create a consistent fingerprinting policy for all licensees under the DCA umbrella.

2) Background. On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All trainees, interns, and registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

Subsequent arrests and/or convictions reports regarding licensees are reported electronically to the Board on individuals fingerprinted with DOJ. Upon receipt of subsequent information, the Board's Enforcement staff follows the same procedures as in the denial process (police and court documents are ordered and the licensee is asked to provide an explanation of the facts and circumstances surrounding the incident). Once all the information is received, the Board's Executive Officer will make a determination of whether the subsequent conviction warrants disciplinary action. The Board evaluates any evidence of rehabilitation as identified in 16 CCR Section 1814. If disciplinary action is

warranted, the case will be forwarded to the Office of the Attorney General for filing of an Accusation. The licensee has the right to request an Administrative Hearing.

Sometime after implementing the fingerprint process in 1992, information was received by the Department of Consumer Affairs (DCA) that the FBI questioned the authority given to State agencies to conduct fingerprint checks through the FBI. Legislation was sponsored and in 1997, the California Legislature gave the Board and other entities under the umbrella of the DCA the authority under BPC Section 144, to require a DOJ and FBI criminal history background check on all applicants seeking registration and/or licensure (SB 1346, Chapter 758, Statutes of 1997).

Since 1998, all applicants for registration and licensure must submit a full set of fingerprints as part of the application process. With limited exceptions, all applicants are required to submit their prints via Live Scan. Traditional fingerprint cards (hard cards) are accepted only in those cases where the applicant is located outside of California, or demonstrates a hardship approved by the board.

Although the Board implemented a fingerprinting process in 1992, the fingerprint requirement related to candidates already in the examination cycle by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board. Legislation creating BPC 144 in 1998 allowed the Board to require applicants to submit fingerprints for the purpose of conducting criminal history records check. Due to the narrow interpretation of the language of BPC 144, the Board has only required applicants for registration and licensure to meet the fingerprint requirement and therefore, those board registrants in the examination cycle before 1992 or individuals licensed with the Board before 1992 have not met the fingerprint requirement set forth in BPC 144. Those licensees and registrants that have not been fingerprinted do not generate a subsequent arrest notification by the DOJ and therefore, the board is not notified, except by licensee and registrant self-disclosure on renewal, of arrests and/or criminal convictions. It is necessary for the board to have the knowledge of unprofessional conduct, including arrests and criminal convictions, in order to proceed with disciplinary action.

3) **Pending Board Regulation**. The final rulemaking package requiring all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ was approved by the Board at its February 26, 2009 meeting. Currently staff is awaiting final approval of the package from the Department. of Consumer Affairs. Upon Department approval the package will be submitted to the Office of Administrative Law.

Specifically the Board's proposed regulation would:

- Require all licensees on or after October 31, 2009 who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date. The purpose of this provision is to ensure the board receives criminal background and subsequent conviction information on Board registrants and licensees in order to protect the public from unprofessional practitioners and fully implement the Board's mandate to enforce the unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)).

- Requires a license or registration that has been revoked to not be reinstated until the licensee or registrant has submitted fingerprints for a criminal records search conducted through DOJ. The purpose of this provision is to make certain that all licensees, irrespective of licensure status, meets the fingerprinting requirements set forth in this regulation before resuming practice with the public.

- Exempts from the requirements of this proposed regulation licensees or registrants actively serving in the United States military. The purpose of this provision is to allow those licensees or registrants not in active practice to only meet the requirement before returning to active practice with the public.

- Requires licensees and registrants to retain for at least three years either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensees or registrants fingerprints were taken. The purpose of this provision is to permit the licensee or registrant to demonstrate compliance with the fingerprinting requirement in the event that fingerprint reports are not processed correctly by DOJ.

- Requires licensees and registrants to pay, as directed by the board, the actual cost of compliance with the fingerprinting requirements of this regulation. The purpose of this provision is to make certain that the licensee or registrant pays the full cost of the service provided.

- Allows the Board to take disciplinary action against a licensee or registrant if he or she fails to comply with the fingerprinting requirements set forth in this regulation. The purpose of this provision is to ensure compliance with this new regulation.

- Makes failure to submit fingerprints to DOJ a citable fine and allows the executive officer of the board to assess fines not to exceed five thousand ($5,000) for each investigation for the violation. The purpose of this provision is to better ensure compliance and enforceability of this regulation and to further implement the Board's authority under BPC 125.9.

4) Differences in Proposed Legislation and Board Rulemaking. The language in SB 389 and the board's proposed fingerprint regulation are very similar. However, one major difference is that the Board proposed regulation is NOT tied to license renewal. If a licensee fails to comply with the fingerprint requirements as set forth in the Board's regulation it is a citable offense; fingerprint submission is not a condition of renewal.

Another significant difference between the Board regulation and the bill before the Committee is the implementation timeline. The Board's regulation requires that all licensees and registrants subject to the regulatory requirements (those they have not submitted fingerprints previously or for whom an electronic record of their fingerprints do not exist with DOJ) to submit fingerprints by his or her license or registration renewal date that occurs after October 31, 2009. SB 389 fingerprint submission requirement as a condition of renewal becomes operative for those renewing after January 1, 2011.

5) Fingerprint Submission and Certification as a Condition of License Renewal. The Board's proposed regulation does not make fingerprint submission a condition of licensure or registration for a number of reasons. First, due to the nature of the work Board licensees perform and the populations they serve, the Board did not feel that it was appropriate to take these professionals out of the workforce for failure to submit fingerprints by their renewal

date. Many people and entities rely on Board licensees, including some communities that may only have one mental health practitioner serving the entire area/region.

Section 144.5(a) of this states that renewal is contingent on successful completion of a Criminal Offender Record Information (CORI) search by DOJ. Subdivision (b) of the same section makes certification of completion of CORI an additional condition of renewal. Therefore, if a licensee fails to check the box (certify that he or she has completed the requirement) their licenses may not be renewed (though they have actually completed a CORI search with DOJ). This can mean a delay in the ability of a licensee to practice. Additionally, completion of a CORI search can be interpreted to mean not the submission of the prints, but the running of the report by DOJ. If a person has a criminal background, or there is an error with the prints with state or federal system (there is a 15% error rate) - it may take months to *complete* a CORI search. Again - a licensee will not be able to work in that time that the Board is waiting for the search to be completed, though they have submitted the fingerprints required.

The Board of Behavioral Sciences is one of the boards under DCA that have proposed fingerprint regulations either already in place or in the rulemaking process. Each board is different and serves a unique population of consumers and licensees and therefore, creating a one size fits all solution, as with this proposed legislation, may not be the best way to address the fingerprinting problem.

If this bill were to go into effect as currently written it would hamper the Board's ability to protect consumers from professionals with related convictions in a expedient and efficient manner. The Board has been granted funding for extra staff to move forward with fingerprinting 30,000 licensees that currently do not have an electronic fingerprint record with DOJ, beginning this year. It is important that the Board be able to move forward as soon as possible to ensure that all Board licensees meet the current licensing standards and consumers are not unduly put into harm's way.

6) SB 389 Implementation Issues.

Linking fingerprint submission to licensure renewal creates a significant workload problem for the Board, in addition to creating confusion to the licensees. Currently the Employment Development Department (EDD) sends Board renewal notices (automatically 90 days before license expiration) to all licensees and registrants. If fingerprint submission is a condition of renewal, and certification is required on the renewal form, then *all* licensees, 90 days before the expiration of their license, would get a renewal form asking for certification of fingerprint submission. In the Board's case, that means that 40,000 licensee that do not need to meet the new requirement (because they have already been fingerprinted) will get a renewal form that asks for certification of fingerprint submission. The volume of inquires that would result would be overwhelming to the Board staff and would take time away from processing new licenses and renewals. This of course could lead to less professionals being able to practice.

As currently written, this bill stipulates that the fingerprint submission upon renewal requirement becomes operative in January 1, 2011. In actuality this means that a licensee could go nearly four years from now before the Board would have a CORI report on a licensee (renewal is biennial; last possible renewal with fingerprints would be due December 31, 2012). The Board's proposed regulation requires licensees with renewals after October 31, 2009 to submit fingerprints - making the last possible licensee to submit fingerprints due October, 2011.

7) **Suggested Amendments.** Staff suggests that references to the Board of Behavioral Sciences be removed from BPC sections 144.5 and 144.6 of the bill that relates to the fingerprinting of licensees as a condition of renewal.

8) **Support and Opposition.** None on file at this time.

9) **History**

2009

Mar. 4	Referred to Com. on HEALTH.
Feb. 11	From printer. May be heard in committee March 13.
Feb. 10	Read first time. To print.

SENATE BILL No. 389

Introduced by Senator Negrete McLeod

February 26, 2009

An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as introduced, Negrete McLeod. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciary Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require applicants for a license and, commencing January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill

would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant *for a license* to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks *and shall require the applicant to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice as provided in subdivision (c) or as otherwise provided in this code*. ~~Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.~~

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.

(11) Respiratory Care Board of California.

(12) Hearing Aid Dispensers ~~Advisory Commission~~ *Bureau*.

(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) ~~The~~ California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.
(27) Dental Board of California.
(28) Dental Hygiene Committee of California.
(27) Professional Fiduciaries Bureau.
(28) California Board of Podiatric Medicine.
(29) Osteopathic Medical Board of California.
(30) State Board of Chiropractic Examiners.

~~(c) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.~~

(c) Except as otherwise provided in this code, each agency listed in subdivision (b) shall direct applicants for a license to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

SEC. 2. Section 144.5 is added to the Business and Professions Code, to read:

144.5. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) of Section 144 shall require a licencee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice as provided in subdivision (d).

(b) (1) A licensee described in subdivision (a) shall, as a condition of license renewal, certify on the renewal application that he or she has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(2) The licensee shall retain for at least three years, as evidence of the certification made pursuant to paragraph (1), either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's fingerprints were taken.

(c) Failure to provide the certification required by subdivision (b) renders an application for renewal incomplete. An agency shall not renew the license until a complete application is submitted.

(d) Each agency listed in subdivision (b) of Section 144 shall direct licensees described in subdivision (a) to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(e) An agency may waive the requirements of this section if the license is inactive or retired, or if the licensee is actively serving in the military. The agency may not activate an inactive license or return a retired license to full licensure status for a licensee described in subdivision (a) until the licensee has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(f) With respect to licensees that are business entities, each agency listed in subdivision (b) of Section 144 shall, by regulation, determine which owners, officers, directors, shareholders, members, agents, employees, or other natural persons who are representatives of the business entity are required to submit fingerprint images to the Department of Justice and disclose the information on its renewal forms, as required by this section.

(g) A licensee who falsely certifies completion of a state and federal level criminal record information search under subdivision (b) may be subject to disciplinary action by his or her licensing agency.

(h) This section shall become operative on January 1, 2011.

SEC. 3. Section 144.6 is added to the Business and Professions Code, to read:

144.6. (a) An agency described in subdivision (b) of Section 144 shall require a licensee, as a condition of license renewal, to notify the board on the license renewal form if he or she has been convicted, as defined in Section 490, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

(b) The reporting requirement imposed under this section shall apply in addition to any other reporting requirement imposed under this code.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 543 **VERSION:** INTRODUCED FEBRUARY 27, 2009

AUTHOR: LENO **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: MINORS: CONSENT TO MENTAL HEALTH TREATMENT

Existing Law:

1) Defines a "professional person" related to mental health treatment or counseling services in the treatment of minors on an outpatient basis or in a residential shelter as any of the following: (Family Code §6924 (a)(2))

   a) A psychiatrist;

   b) A psychologist, licensed by the State Board of Medical Quality Assurance;

   c) A Licensed Clinical Social Worker (LCSW), with specified exemptions for continuous employment in the same class in the same program facility, or enrollment in an accredited doctoral program in social work, social welfare or social science;

   d) A Licensed Marriage and Family Therapist (MFT);

   e) A Licensed Educational Psychologist (LEP);

   f) A credentialed school psychologist;

   g) A clinical psychologist;

   h) A MFT Intern, while working under the supervision of a licensed professional; and,

   i) A chief administrator of at a mental health treatment or counseling entity described or a residential shelter.

2) Defines "mental health treatment or counseling services" as the provision of mental health treatment or counseling on an outpatient basis by any of the following: (Family Code §6924 (a)(1))

   a) A governmental agency;

b) A person or agency having a contract with a governmental agency to provide those services;

c) An agency that receives funding from community united funds;

d) A runaway house or crisis resolution center; or,

e) A professional person, as defined.

3) Defines a "residential shelter service" as any of the following: (Family Code §6924 (a)(3))

a) A provision of residential and other support services to minors on a temporary emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

b) The provision of other support services on a temporary or emergency basis by any professional person, as defined.

4) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to a residential shelter facility if the minor is mature enough to participate intelligently in the counseling services and if the minor either would present a danger of serious physical or mental harm to self or others without receiving the services or if the minor is an alleged victim of incest of child abuse. (Family Code §6924 (b))

5) Requires a professional person offering residential shelter services to make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))

6) Requires the mental health treatment or counseling of a minor authorized by this section of law to include the involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. (Family Code §6924 (c))

<u>This Bill:</u>

1) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to a residential shelter facility if the minor is mature enough to participate intelligently in the counseling services <u>or</u> if the minor either would present a danger of serious physical or mental harm self or others without receiving the services or if the minor is an alleged victim of incest of child abuse. (Family Code §6924 (b))

2) Deletes the requirement that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))

3) States that the mental health treatment or counseling of a minor authorized in this section of law shall include the involvement of the minor's parent or guardian if appropriate, as determined by the professional person or treatment facility treating the minor. (Family Code §6924 (c))

Comment:

1) **Author's Intent.** According to the author's office, this bill addresses the identified barrier of parental consent for minor youth seeking mental health services and increases accessibility to mental health programs, particularly prevention and early intervention programs, which have better results, reduce future costs and are less expensive to administer.

   Currently, youth age 12-17 must receive parental consent for mental health treatment or counseling, unless they present a danger of serious physical or mental harm to themselves or others. According to the author, parental consent for mental health services can create a barrier, especially in prevention and early intervention programs where youth may not be experiencing serious physical or mental harm. This barrier is especially harmful to certain populations of youth including lesbian, gay, bisexual, and transgender (LGBT) youth.

   Many LGBT youth do not seek prevention or early intervention services due to the need for parental consent. Requiring parental consent can force LGBT youth into emotionally damaging and sometimes physically threatening situations of coming out to their parents prematurely and without support.

   According to the author current law allows youth to seek many services without parental consent, including: reproductive health, treatment of communicable diseases and alcohol or drug abuse counseling.

2) **Expanded population of individuals that may receive services.** This bill will allow a minor 12 -17 years of age to participate in mental health treatment or counseling in certain settings if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently or if the minor may present a danger to himself/herself or others. Currently a minor would have to be able to meet both of these requirements to receive services (essentially specifying that the youth must be in crisis to receive services without parental consent). By lowering the threshold for services, more minors will be eligible for mental health services in particular settings. Additionally, meeting the requirement of being able to participate intelligently in the services is subjective. If a minor is able to locate mental health services that he or she perceives they need, one could assume that the individual would be able to participate intelligently in those services. If a minor did not meet the requirement to be able to participate intelligently, it could be assumed that the individual would most likely meet the criteria of being a mental harm to self or others. Therefore, it could be stated that by allowing these minors to meet only one of the current requirements to consent to mental health services, this bill will effectively open up services in the specified settings for a majority of all youth 12-17 years of age.

3) **Parental Rights.** Current law requires a professional person offering residential shelter services to make his or her best effort to notify the parent and guardian of the minor receiving services. Also, current law requires a practitioner to involve the minor's parent or guardian in those services, unless the practitioner believes that the involvement would be inappropriate. This bill will allow a practitioner to provide services in a residential shelter to a minor without notifying a parent or guardian of the services provided. Additionally, as discussed in #2 (above), this bill expands the population of minors that may be eligible for services without the consent of his or her parents. This bill will remove the right of a parent

to consent or be notified of mental health services that his or her child is receiving in any case where the minor can participate intelligently in services. The practitioner is only required to involve the parent or guardian if the practitioner believes it would be appropriate. This takes considerable discretion away from the parent and gives that discretion to a minor and a mental health practitioner.

4) **Burden for therapist to involve parent or guardian.** Current law requires that a professional person must include involvement of the minor's parent or guardian unless, in the opinion of the practitioner, the involvement would be inappropriate. This bill instead states that the practitioner shall involve the parent or guardian if appropriate. This modification changes the assumption that the parent or guardian *will be* involved to an assumption that they *will not be* involved, unless the practitioner deems it appropriate. This places the burden of involving the parent or guardian on the practitioner, instead of the involvement being a function of the law.

5) **Confidentiality.** Patient privilege exists with the patient that consents to services. This bill presents questions as to the subsequent involvement of a minor's parent or guardian in services. If a practitioner deems it appropriate to involve a parent or guardian in a minor patient's mental health services, what information can the practitioner release to the parent or guardian, and to what extent can that parent or guardian be involved without the consent of the minor?

6) **Suggested Amendments.** Currently subdivision (g) of Family Code Section 6924, specifies that a professional person, defined in this section of law, may be an MFT Intern while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code. This bill inserts language in this provision that the supervision by the licensed professional must be as specified in 4980.40(f), as that subdivision read on January 1, 2003. According to the author's office, this language was added during the drafting on the bill and was intended to clarify the supervision provision. However, inserting the reference to law as it appeared in 2003 adds confusion; this code section has been amended three times since the reference date of January 1, 2003, making it difficult to ascertain what requirements were in effect on that date. Additionally, supervision requirements evolve as does the requirements for registration as a MFT intern, making a reference to outdated requirements not consistent with current law or the Board's mandate to hold consume protection as its highest priority.

7) **Support and Opposition.**

Support: National Association of Social Workers, California Chapter (sponsors)
Mental Health America of Northern California (Sponsor)
GSA Network (Sponsor)
Equality California (Sponsor)

Opposition: None on file.

8) **History**

2009

Mar. 12	To Com. on JUD.
Mar. 2	Read first time.
Feb. 28	From print. May be acted upon on or after March 30.
Feb. 27	Introduced. To Com. on RLS. for assignment. To print.

SENATE BILL No. 543

Introduced by Senator Leno

February 27, 2009

An act to amend Section 6924 of the Family Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as introduced, Leno. Minors: consent to mental health treatment.

Existing law authorizes a minor who is 12 years of age or older to consent to mental health treatment or counseling, except as specified, on an outpatient basis, or to residential shelter services, if two circumstances are satisfied. First, the minor, in the opinion of the attending professional person, must be mature enough to participate intelligently in the outpatient services or residential shelter services. Second, the minor must present a danger of serious physical or mental harm to himself or herself, or others, without the mental health treatment or counseling or residential shelter services, or be the alleged victim of incest or child abuse. Existing law also requires that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of those services. These provisions also require that the mental health treatment or counseling of a minor include the involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate.

This bill would instead authorize a minor who is 12 years of age or older to consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if either circumstance described above is satisfied. The bill would delete the requirement that a professional person offering residential shelter services make his or her best efforts to notify the parent or guardian of the provision of those

services to a minor pursuant to this provision. The bill would also revise the latter provision to require that the mental health treatment or counseling of a minor pursuant to these provisions include the involvement of the minor's parent or guardian if appropriate, as determined by the professional person or treatment facility treating the minor.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6924 of the Family Code is amended to read:

6924. (a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of ~~Subchapter 3 of~~ Chapter ~~1~~ *3* of *Division 1 of* Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in ~~Article 5 (commencing with Section 4986) of Chapter 13~~ *Chapter 13.5 (commencing with Section 4989.10)* of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code *as that subdivision read on January 1, 2003*.

(3) "Residential shelter services" means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if ~~both~~ *either* of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

~~(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.~~

~~(d)~~

(c) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian ~~unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate~~ *if appropriate, as determined by the professional person or treatment facility treating the minor*. The professional

person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **SB 638** **VERSION:** **INTRODUCED FEBRUARY 27, 2009**

AUTHOR: **NEGRETE MCLEOD** **SPONSOR:** **AUTHOR**

RECOMMENDED POSITION: **NONE**

SUBJECT: **REGULATORY BOARDS: BOARD MEMBERSHIP RECONSTITUTION**

Existing Law:

1) States Legislative intent that all consumer-related boards be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board. (BPC § 101.1(a))

2) Requires the Department of Consumer Affairs (DCA) to succeed to and be vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of a board which has become inoperative or is repealed. (BPC § 101.1(b)(1))

3) Prohibits board members from being appointed while a board is inoperative or repealed. (BPC § 101.1(b)(2))

4) Prohibits appointment of an executive officer and nullifies laws that prescribe the executive officer's duties while a board is inoperative or repealed. (BPC § 101.1(b)(3))

5) Requires all boards to prepare an analysis and submit a report to the Joint Committee on Boards, Commissions, and Consumer Protection (JCBCCP) no later than 22 months before the board is scheduled to become inoperative, to include the following information: (BPC § 473.2)

    - A comprehensive statement of the Board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public;
    - The Board's enforcement priorities, complaint and enforcement data, budget expenditures with average and median costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office;
    - The Board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component; and,
    - The Board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

6) Requires, prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the JCBCCP to hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public and the regulated industry. (BPC § 473.3(a))

- Requires each board to demonstrate a compelling public need for the continued existence of the board, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

7) Requires the JCBCCP to evaluate and determine whether a board has demonstrated a public need for the continued existence of the board and for the degree of regulation the board implements based on certain factors and minimum standards of performance. (BPC § 473.4(a))

8) Requires the JCBCCP to consider alternatives to placing responsibilities and jurisdiction of the board under the DCA. (BPC § 473.4(b))

This Bill:

1) Abolishes the JCBCCP. (BPC § 473)

2) Terminates the terms of office for each member of the Board on an unspecified date, unless a later enacted statute, which is enacted before that date, deletes or extends that date. (BPC § 473.12(a))

3) Provides that if the terms of office of the Board membership are terminated pursuant to the provisions of this bill, successor members shall be appointed for the remainder of the office terms by the same appointing authorities as the original membership. (BPC § 101.1)

4) Requires the Board, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committee of the legislature no later than 22 months before the board's membership shall be terminated with the following information: (BPC § 473.2)

   a) The number of complaints it received per year, the number of complaints per year that proceeded to investigation, the number of accusations filed per year, and the number and kind of disciplinary actions taken, including, but not limited to, interim suspension orders, revocations, probations, and suspensions.

   b) The average amount of time per year that elapsed between receipt of a complaint and the complaint being closed or referred to investigation; the average amount of time per year elapsed between the commencement of an investigation and the complaint either being closed or an accusation being filed; the average amount of time elapsed per year between the filing of an accusation and a final decision, including appeals; and the average and median costs per case.

   c) The average amount of time per year between final disposition of a complaint and notice to the complainant.

   d) A copy of the enforcement priorities including criteria for seeking an interim suspension order.

   e) A brief description of the board's or bureau's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

   f) A brief description of the cost per year required to implement and administer its licensing examination, ownership of the license examination, the last assessment of the relevancy

and validity of the licensing examination, the passage rate for each of the last four years, and areas of examination.

g) A copy of sponsored legislation and a description of its budget change proposals.

h) A brief assessment of its licensing fees as to whether they are sufficient, too high, or too low.

i) A brief statement detailing how the board or bureau over the prior four years has improved its enforcement, public disclosure, accessibility to the public, including, but not limited to, Web casts of its proceedings, and fiscal condition

5) Allows the appropriate policy committee to hold a public hearing before the termination of the terms of office for Board membership to receive and consider testimony from the Director of DCA, the Board, the Attorney General, members of the public, and representatives of the regulated industry regarding the Board's policies and practices and whether an enforcement monitor may be necessary to obtain further information on operations. (BPC § 473.3)

6) Allows the appropriate policy committee of the Legislature to regulatory program has demonstrated a public need for continued existence based on the factors and standards of performance currently in statute. (BPC § 473.4(a))

7) Deletes the sunset review process, including the requirement of JCBCCP to report to DCA findings on the Boards under review, and the requirement that DCA to make recommendations on its findings related to the Board under review to JCBCCP. Also deletes the requirement that the final report of be made public and a hearing to discuss the recommendations be held by JCBCCP. (BPC § 473.5)

8) Makes the appropriate policy committee of the legislature responsible for reviewing by interim study any legislative issue to create a new licensure ore regulatory category. (BPC § 473.6)

9) States that the appropriate policy committees of the legislature may, through their oversight function, investigate the operations of any entity subject to this bill and hold public hearings on whether the Board's policies and practices, including enforcement, disclosure, licensing exams and fee structure, are sufficient to protect consumers and are fair to licensees and prospective licensees, whether licensure of the professions is required to protect the public, and whether an enforcement monitor may be necessary to obtain further information on operations. (BPC § 473.7)

Comment:

1) Author's Intent. According to the author's office, in recent years when problems have been identified with a variety of boards, the most effective means of achieving resolution and change has been reconstitution the board. This bill would make reconstitution automatic when a board becomes inoperative. According to the author this bill is needed to update and streamline the sunset review process.

2) **Sunset Review.** In 1994, the legislature enacted the "sunset review" process, which permits the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The sunset review process is in part built on an assumption in law that if a board is operating poorly, and lesser measures have been ineffective in rectifying the problems, the board should be allowed to sunset and the administration of the licensing act would be done more effectively if the board becomes a bureau under the DCA.

   Under a bureau, a bureau chief is in charge and reports to the director of the Department. In bureaus, many decisions are made through a closed-door administrative management structure. Under a board structure, board members are appointed and hold hearings in public. The board members appoint an executive officer who manages the operations of the board and reports to the board in public. This process is more accountable and transparent and offers the public more opportunity to participate.

   This bill would essentially allow the creation of a new board membership by allowing appointing authorities to appoint new members to replace problem members and to reappoint effective members. The new board may then replace the executive officer if the executive officer has been ineffective in managing the operations.

3) **Requirements of Board Report to Legislature.** Previous sunset reports required by the legislature required the Board to provide general information regarding the Board's mission, goals and objectives and legal jurisdiction in protecting the health, safety, and welfare of the public. Additionally, the legislature required an overview of the Board's enforcement priorities, budget expenditures for enforcement efforts and case aging data. SB 638 recasts these provisions prescriptively. For instance, the current statutory requirement described above relating to Board enforcement data is contained in one subdivision. In SB 788, information required related to enforcement is detailed in three separate subdivisions, outlining the exact information required by the Legislature, such as, the number of complaints received per year, the average amount of time per year between final disposition of a complaint and notice of compliant and the average cost per case. The new report requirements are listed in detail in this analysis under number four of the section explaining the requirements of this bill.

   All the information required to be reported to the Legislature by this bill is information currently tracked and compiled by this Board. However, BPC Section 473.2(a)(7) states that the Board's report to the Legislature must include a description of its budget change proposals (BCPs) related to sponsored legislation. The Board would be unable to comply with this provision as BCPs are not public information until they are included in the Governor's budget.

4) **Effective Legislative Oversight.** The Sunset Review process has not always been well received by boards and bureaus.

   - The process has been time consuming and does drain scarce resources away from other priorities.
   - As a legislative process, Sunset Review has sometimes felt political influences independent of assessing the performance of individual programs.
   - The review process has also suffered from not having well articulated performance standards for boards. Review has been on a "we know a problem when we see it" basis. A holistic element is necessary in any board review

process, but it ought to be bracketed by some relatively concrete performance standards.

Despite those issues, regular legislative oversight has real value and should be continued. It provides an opportunity for sharing successful strategies among programs and has been a vehicle for progressive changes on boards with strong track records. However, it appears that the existing Sunset Review process may no longer be viable, and some replacement oversight mechanism needs to be considered.

The committee may want to consider providing comment for the Legislature's consideration regarding elements of an effective oversight process. The staff suggests the following concepts:

Oversight Processes should include:

1) Open/collaborative process of establishing some concrete performance standards in major program areas (licensing, cashiering, examinations, etc.).
2) Thematic Focus. Existing review processes are conducted by snapshot reviews of individual boards over time. This may be appropriate for boards/bureaus with particularly acute problems; however, performing an individual round of oversight along a particular theme (licensing, enforcement, customer service, communications, etc.) and sampling the 37 DCA boards and bureaus as to that theme would be more productive and informative for both the Legislature and the participating boards/bureaus.
3) Coordination between the Assembly and Senate committees. Duplicative or conflicting oversight and standard setting efforts are in no one's interest.
4) Hands On. Oversight staff should attend/participate in public board and committee meetings as part of the process. Board policymaking and public processes are essential to our functions and are hard to evaluate completely without seeing them in person.

The Legislature can command the attention and participation of any board both through the relevant policy committees and through the annual budget process. Sunset dates are not needed to "enforce" effective oversight.

5) **Previous Legislation and Board Action.** SB 963 (Ridley-Thomas), Chapter 385, Statutes of 2007 similarly streamlined the sunset review process by making board reconstitution automatic when a board becomes inoperative on a specified date. The Board took no formal position on this legislation. SB 963 was later amended to extend the inoperative date the Board, at which time the Board adopted a support position on the legislation.

6) Support and Opposition.
None on file

7) History
2009
Mar. 19 To Coms. on B., P. & E.D. and RLS.
Mar. 2 Read first time.
Feb. 28 From print. May be acted upon on or after March 30.
Feb. 27 Introduced. To Com. on RLS. for assignment. To print.

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SENATE BILL No. 638

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 638, as introduced, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief

within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and the Tax Education Council to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if their annual report contains certain information, to post it on its Internet Web site. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 22 of the Business and Professions Code is amended to read:

22. ~~(a)~~ "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

~~(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a "bureau."~~

SEC. 2. Section 101.1 of the Business and Professions Code is repealed.

~~101.1. (a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board in accordance with enumerated factors and standards as set forth in Division 1.2 (commencing with Section 473).~~

~~(b) (1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.~~

~~(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.~~

~~(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.~~

~~(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.~~

SEC. 3. Section 101.1 is added to the Business and Professions Code, to read:

101.1. (a) Notwithstanding any other provision of law, if the terms of office of the members of a board are terminated in accordance with the act that added this section or by subsequent acts, successor members shall be appointed that shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the members that they are succeeding. The successor members shall be appointed by the same appointing authorities, for the remainder of the previous members' terms, and shall be subject to the same membership requirements as the members they are succeeding.

(b) Notwithstanding any other provision of law, if the term of office for a bureau chief is terminated in accordance with the act that added this section or by subsequent acts, a successor bureau chief shall be appointed who shall succeed to, and be vested with,

all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the bureau chief that he or she is succeeding. The successor bureau chief shall be appointed by the same appointing authorities, for the remainder of the previous bureau chief's term, and shall be subject to the same requirements as the bureau chief he or she is succeeding.

SEC. 4. Section 473 of the Business and Professions Code is repealed.

~~473. (a) There is hereby established the Joint Committee on Boards, Commissions, and Consumer Protection.~~

~~(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall appoint the chairperson of the committee.~~

~~(c) The Joint Committee on Boards, Commissions, and Consumer Protection shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.~~

~~(d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Committee on Boards, Commissions, and Consumer Protection.~~

~~(e) The Joint Committee on Boards, Commissions, and Consumer Protection is authorized to act until January 1, 2012, at which time the committee's existence shall terminate.~~

SEC. 5. Section 473 is added to the Business and Professions Code, to read:

473. Whenever the provisions of this code refer to the Joint Committee on Boards, Commissions and Consumer Protection, the reference shall be construed to be a reference to the appropriate policy committees of the Legislature.

SEC. 6. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to ~~become inoperative and to be repealed~~ *have its membership reconstituted* on a specified date as provided by ~~the specific act relating to the board~~ *subdivision (a) of Section 473.12*.

(b) ~~The Bureau for Postsecondary and Vocational Education. For purposes of this chapter, "board" includes the bureau~~*Every bureau that is named in subdivision (b) of Section 473.12*.

(c) ~~The Cemetery and Funeral Bureau~~*Every entity that is named in subdivision (c) of Section 473.12*.

SEC. 7. Section 473.12 is added to the Business and Professions Code, to read:

473.12. (a) Notwithstanding any other provision of law, the term of office of each member of the following boards in the department shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that board, deletes or extends that date:

(1) The Dental Board of California: January 1, ____.

(2) The Medical Board of California: January 1, ____.

(3) The State Board of Optometry: January 1, ____.

(4) The California State Board of Pharmacy: January 1, ____.

(5) The Veterinary Medical Board: January 1, ____.

(6) The California Board of Accountancy: January 1, ____.

(7) The California Architects Board: January 1, ____.

(8) The State Board of Barbering and Cosmetology: January 1, ____.

(9) The Board for Professional Engineers and Land Surveyors: January 1, ____.

(10) The Contractors' State License Board: January 1, ____.

(11) The Structural Pest Control Board: January 1, ____.

(12) The Board of Registered Nursing: January 1, ____.

(13) The Board of Behavioral Sciences: January 1, ____.

(14) The State Athletic Commission: January 1, ____.

(15) The State Board of Guide Dogs for the Blind: January 1, ____.

(16) The Court Reporters Board of California: January 1, ____.

(17) The Board of Vocational Nursing and Psychiatric Technicians: January 1, ____.

(18) The Landscape Architects Technical Committee: January 1, ____.

(19) The Board for Geologists and Geophysicists: January 1, ____.

(20) The Respiratory Care Board of California: January 1, ____.

(21) The Acupuncture Board: January 1, ____.

(22) The Board of Psychology: January 1, ____.

(23) The California Board of Podiatric Medicine: January 1, ____.

(24) The Physical Therapy Board of California: January 1, ____.

(25) The Physician Assistant Committee, Medical Board of California: January 1, ____.

(26) The Speech-Language Pathology and Audiology Board: January 1, ____.

(27) The California Board of Occupational Therapy: January 1, ____.

(28) The Dental Hygiene Committee of California: January 1, ____.

(b) Notwithstanding any other provision of law, the term of office for the bureau chief of each of the following bureaus shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that bureau, deletes or extends that date:

(1) Arbitration Review Program: January 1, ____.

(2) Bureau for Private Postsecondary Education: January 1, ____.

(3) Bureau of Automotive Repair: January 1, ____.

(4) Bureau of Electronic and Appliance Repair: January 1, ____.

(5) Bureau of Home Furnishings and Thermal Insulation: January 1, ____.

(6) Bureau of Naturopathic Medicine: January 1, ____.

(7) Bureau of Security and Investigative Services: January 1, ____.

(8) Cemetery and Funeral Bureau: January 1, ____.

(9) Hearing Aid Dispensers Bureau: January 1, ____.

(10) Professional Fiduciaries Bureau: January 1, ____.

(11) Telephone Medical Advice Services Bureau: January 1, ____.

(12) Division of Investigation: January 1, ____.

(c) Notwithstanding any other provision of law, the following shall be subject to review under this chapter on the following dates:

(1) Interior design certification organizations: January 1, ____.

(2) State Board of Chiropractic Examiners pursuant to Section 473.15: January 1, ____.

(3) Osteopathic Medical Board of California pursuant to Section 473.15: January 1, ____.

(4) California Tax Education Council: January 1, ____.

(d) Nothing in this section or in Section 101.1 shall be construed to preclude, prohibit, or in any manner alter the requirement of Senate confirmation of a board member, chief officer, or other appointee that is subject to confirmation by the Senate as otherwise required by law.

(e) It is not the intent of the Legislature in enacting this section to amend the initiative measure that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 8. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The ~~Joint Committee on Boards, Commissions, and Consumer Protection established pursuant to Section 473~~ *appropriate policy committees of the Legislature* shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2010.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2011.

(d) The ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall, during the interim recess of ~~2004~~ *2011* for the Osteopathic Medical Board of California, and during the interim

recess of 2011 for the State Board of Chiropractic Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall evaluate and make determinations pursuant to Section 473.4 ~~and shall report its findings and recommendations to the department as provided in Section 473.5~~.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in ~~requiring a review under~~ *enacting* this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 9. Section 473.16 of the Business and Professions Code is repealed.

~~473.16. The Joint Committee on Boards, Commissions, and Consumer Protection shall examine the composition of the Medical Board of California and its initial and biennial fees and report to the Governor and the Legislature its findings no later than July 1, 2008.~~

SEC. 10. Section 473.2 of the Business and Professions Code is amended to read:

473.2. *(a)* All boards ~~to which this chapter applies~~ *or bureaus listed in Section 473.12* shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* no later than 22 months before that ~~board~~ *board's membership or the bureau chief's term* shall ~~become inoperative~~ *be terminated*

pursuant to Section 473.12. The analysis and report shall include, at a minimum, all of the following:

~~(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.~~

~~(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.~~

~~(c) The board's~~

(1) The number of complaints it received per year, the number of complaints per year that proceeded to investigation, the number of accusations filed per year, and the number and kind of disciplinary actions taken, including, but not limited to, interim suspension orders, revocations, probations, and suspensions.

(2) The average amount of time per year that elapsed between receipt of a complaint and the complaint being closed or referred to investigation; the average amount of time per year elapsed between the commencement of an investigation and the complaint either being closed or an accusation being filed; the average amount of time elapsed per year between the filing of an accusation and a final decision, including appeals; and the average and median costs per case.

(3) The average amount of time per year between final disposition of a complaint and notice to the complainant.

(4) A copy of the enforcement priorities including criteria for seeking an interim suspension order.

(5) A brief description of the board's or bureau's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

~~(d) The board's description of its licensing process including the time and costs~~

(6) A brief description of the cost per year required to implement and administer its licensing examination, ownership of the license examination, *the last assessment of the* relevancy and validity of the licensing examination, ~~and~~ *the* passage rate *for each of the last four years*, and areas of examination.

~~(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.~~

(7) A copy of sponsored legislation and a description of its budget change proposals.

(8) A brief assessment of its licensing fees as to whether they are sufficient, too high, or too low.

(9) A brief statement detailing how the board or bureau over the prior four years has improved its enforcement, public disclosure, accessibility to the public, including, but not limited to, Web casts of its proceedings, and fiscal condition.

(b) If an annual report contains information that is required by this section, a board or bureau may submit the annual report to the committees and it shall post it on the board's or bureau's Internet Web site.

SEC. 11. Section 473.3 of the Business and Professions Code is amended to read:

473.3. ~~(a)~~ Prior to the termination~~, continuation, or reestablishment~~ *of the terms of office* of *the membership of* any board or~~ any of the board's functions, the Joint Committee on Boards, Commissions, and Consumer Protection shall~~ *the chief of any bureau described in Section 473.12, the appropriate policy committees of the Legislature,* during the interim recess preceding the date upon which a~~ board becomes inoperative~~ *board member's or bureau chief's term of office is to be terminated, may* hold public hearings to receive *and consider* testimony from the Director of Consumer Affairs, the board *or bureau* involved,~~ and~~ *the Attorney General, members of* the public, and *representatives of the* regulated industry~~. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare~~ *regarding whether the board's or bureau's policies and practices, including enforcement, disclosure, licensing exam, and fee structure, are sufficient to protect consumers and are fair to licensees and prospective licensees, whether licensure of the profession is required to protect the public, and whether an enforcement monitor may be necessary to obtain further information on operations*.

~~(b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the~~

~~Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.~~

~~(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.~~

~~(d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.~~

~~(e) The committee shall evaluate and review the effectiveness and efficiency of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.~~

SEC. 12. Section 473.4 of the Business and Professions Code is amended to read:

473.4. (a) The ~~Joint Committee on Boards, Commissions, and Consumer Protection shall~~ *appropriate policy committees of the Legislature may* evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the ~~board or~~ regulatory program and for the degree of regulation the board or regulatory program

implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

~~(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.~~

~~(c)~~

(b) Nothing in this section precludes any board from submitting other appropriate information to the ~~Joint Committee on Boards, Commissions, and Consumer Protection.~~ *appropriate policy committees of the Legislature.*

SEC. 13. Section 473.5 of the Business and Professions Code is repealed.

~~473.5. The Joint Committee on Boards, Commissions, and Consumer Protection shall report its findings and preliminary recommendations to the department for its review, and, within 90 days of receiving the report, the department shall report its findings and recommendations to the Joint Committee on Boards, Commissions, and Consumer Protection during the next year of the regular session that follows the hearings described in Section 473.3. The committee shall then meet to vote on final recommendations. A final report shall be completed by the committee and made available to the public and the Legislature. The report shall include final recommendations of the department and the committee and whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.~~

SEC. 14. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to ~~the Joint Committee on Boards, Commissions, and Consumer Protection for~~ *interim study* review of any legislative issues or proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of practice, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 15. Section 473.7 is added to the Business and Professions Code, to read:

473.7. The appropriate policy committees of the Legislature may, through their oversight function, investigate the operations of any entity to which this chapter applies and hold public hearings on any matter subject to public hearing under Section 473.3.

SEC. 16. Section 9882 of the Business and Professions Code is amended to read:

9882. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In 2003 and every four years thereafter, the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall hold a public hearing to receive *and consider* testimony from the Director of Consumer Affairs ~~and~~, the bureau~~. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare~~, *the Attorney General, members of the public, and representatives of this industry regarding the bureau's policies and practices as specified in Section 473.3*. The ~~committee shall~~ *appropriate policy committees of the Legislature may* evaluate and review the effectiveness and efficiency of the bureau based on factors and minimum standards of performance that are specified in Section 473.4. ~~The committee shall report its findings and recommendations as specified in Section 473.5.~~ The bureau shall prepare an analysis and submit a report to the ~~committee~~ *appropriate policy committees of the Legislature* as specified in Section 473.2.

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: **SB 788** **VERSION:** **INTRODUCED FEBRUARY 27, 2009**

AUTHOR: **WYLAND** **SPONSOR:** **CALIFORNIA COALITION FOR COUNSELOR LICENSURE**

RECOMMENDED POSITION: **SUPPORT**

SUBJECT: **LICENSED PROFESSIONAL CLINICAL COUNSELORS**

Existing Law:

1) Defines unprofessional conduct for each of the license types authorized to perform psychotherapy.

2) Generally establishes the following requirements for licensure of psychotherapists:
   - A graduate degree from an accredited school in a related clinical field
   - Extensive hours of supervised experience gained over two years
   - Registration with the regulatory Board while gaining the supervised experience
   - Standard and Clinical Vignette licensing examinations

3) Defines professions authorized to perform psychotherapy as Licensed Clinical Social Workers (LCSW), Marriage and Family Therapists (MFT), Psychologists, and Physicians and Surgeons.

4) Requires professions authorized to perform psychotherapy to be licensed and overseen by a regulatory Board.

5) Requires the licensing and regulation of LCSWs, MFTs, and Licensed Educational Psychologists (LEP) by the Board of Behavioral Sciences (Board).

6) Requires the author or sponsor of legislation proposing a new category of licensed professional to develop a plan that includes specific information and data. The plan must be provided to the legislature with the initial legislation, and forwarded to the appropriate policy committees. The plan must include the following: (Government Code § 9148.4)
   - The source of revenue and funding.
   - The problem that the new category of licensed professional would address, including evidence of need for the state to address the problem.
   - Why the new category of licensed professional was selected to address the problem, the alternatives considered and why each alternative was not selected. Alternatives to be considered include:
     - No action taken.
     - A category of licensed professional to address the problem currently exists. Include any changes to the mandate of the existing category of licensed professional.
     - The levels of regulation or administration available to address the problem.
     - Addressing the problem by federal or local agencies.
     - The public benefit or harm that would result from establishing a new category of licensed professional, how a new category of licensed professional would achieve this benefit, and the standards of performance to review the professional practice.

7) Permits the chairpersons of the appropriate policy committees of the Legislature to refer to the Joint Committee on Boards, Commissions, and Consumer Protection (JCBCCP) for review of any legislative issues, plans, or proposals to create new regulatory categories. Requires evaluations prepared by the JCBCCP to be provided to the respective policy and fiscal committees. (B&P Code § 473.6, GC 9148.8)

8) Prohibits a healing arts licensing Board under the Department of Consumer Affairs to require an applicant for licensure to be registered by or otherwise meet the standards of a private voluntary association or professional society. (B&P Code § 850).

This Bill:

1) Requires the licensing and regulation of Licensed Professional Clinical Counselors (LPCC) and professional counselor interns by the BBS.

2) Defines LPCCs, professional counselor interns, and counselor trainees as psychotherapists who are required to provide a brochure to patients who have been sexually involved with a former psychotherapist. (B&P Code § 728(c))

3) Adds LPCCs to the list of licensees to whom a licensed health care facility, clinic, or their staff must report should the licensee's application for staff privileges or membership be rejected, revoked or suspended, or whose employment is terminated or suspended, for a medical disciplinary reason. (B&P Code § 805)

4) Requires the Governor to appoint two LPCCs to the Board, and two additional public members, for a total of 15 members. (B&P Code § 4990)

5) Defines "Applicant" as an unlicensed person who has completed the qualifying degree program and is described by one of the following: (B&P Code § 4999.12(d))
    - Whose application for registration as a professional counselor intern is pending.
    - Is in the examination process.
    - Has completed the requirements for licensure, is no longer registered as an intern, and is in the examination process.

6) Defines "Licensed professional clinical counselor" as a person licensed to practice professional clinical counseling. (B&P Code § 4999.12 (e))

7) Defines "Intern" as an unlicensed person who is registered with the Board as a LPCC intern. (B&P Code § 4999.12 (f))

8) Defines "Counselor Trainee" as an unlicensed person who is enrolled in a degree program that qualifies for LPCC licensure and who has completed a minimum of 12 semester or 18 quarter units of coursework. (B&P Code § 4999.12 (g))

9) Defines "Approved Supervisor" as an individual who has two years of clinical experience as any one of the following licensees: (B&P Code § 4999.12 (h))
    - LPCC
    - Marriage and family therapist (MFT)
    - Clinical psychologist
    - Clinical social worker (LCSW)
    - Physician certified in psychiatry by the American Board of Psychiatry and Neurology

10) Defines "Professional enrichment activities" as any of the following: (B&P Code § 4999.12 (i))
    - Supervisor-approved workshops, seminars, training sessions, or conferences directly

related to professional counseling.
- Participation in group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

11) Defines “advertising” or “advertise” as including: (B&P Code § 4999.12(j))
    - The issuance of any card, sign, or device to any person.
    - The causing, or allowing of any sign or marking on or in any building or structure, or in any printed matter whatsoever.
    - Business solicitations communicated by radio or television broadcasting.

12) Defines “referral” as evaluating and identifying the needs of a client to determine whether it is advisable to refer the client to other specialists, informing the client of that judgment, and communicating that determination as requested or deemed appropriate to referral sources. (B&P Code § 4999.12(k))

13) Defines “Assessment” as selecting, administering, scoring, and interpreting tests, instruments, and other tools and methods designed to measure an individual’s attitudes, abilities, aptitudes, achievements, interests, characteristics, disabilities and mental, emotional and behavioral concerns and development and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or ameliorating changing life situations, as part of the counseling process. Assessment shall not include the use of projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior. (B&P Code § 4999.20 (c))

14) Defines “Counseling interventions and psychotherapeutic techniques” as the application of cognitive , affective, behavioral, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness, and pathology that reflect a pluralistic society. These interventions and techniques are specifically implemented in the context of a professional counseling relationship and use a variety of counseling theories and approaches. (B&P Code § 4999.20 (b))

15) Defines “Research” as a systematic effort to collect, analyze, and interpret data that describes the interaction between social characteristics, behavior, emotion, cognitions, disabilities, mental disorders, and interpersonal transactions among individuals and organizations. (B&P Code § 4999.12(l))

16) Defines “Supervision” as including all of the following: (B&P Code § 4999.12(m))
    - Ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised.
    - Reviewing client or patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions.
    - Monitoring and evaluating the ability of the intern or trainee to provide services to the particular clientele at the site or sites where he or she will be practicing.
    - Ensuring compliance with laws and regulations governing the practice of professional counseling.
    - Direct observation, or review of audio or videotapes of counseling or therapy.

17) Requires the Board to communicate information about its activities, the requirements and qualifications for licensure, and the practice of professional counseling to stakeholders. (B&P Code § 4999.14(a)

18) Requires the Board to develop policies and procedures to assist educational institutions in meeting the curricula requirements for LPCC licensure. (B&P Code § 4999.14 b)

19) Defines "Professional clinical counseling" as the application of counseling interventions and psychotherapeutic techniques to indentify and remediate behavioral, cognitive, mental and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. Professional clinical counseling includes conducting assessments for the purpose of establishing treatment goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, and make well-informed, rational decisions. (B&P Code § 4999.20(a))

20) Requires LPCCs to refer clients to other licensed health care professionals when they identify issues beyond their own scope of education, training, supervision and experience. (B&P Code § 4999.20(d))

21) Permits persons to do work of a psychosocial nature, but prohibits such persons from: (B&P Code § 4999.22(a)):
    - Using any title or description of services incorporating the words "license professional clinical counselor"
    - Stating that they are licensed to practice professional clinical counseling

22) Clarifies that LPCC laws would not limit medical, social work, nursing, psychology, or marriage and family therapy licensing laws. (B&P Code § 4999.22(b)):

23) Clarifies that LPCC laws would not apply to (B&P Code § 4999.22(c)):
    - Any priest, rabbi, or minister any religious denomination who performs counseling services as part of his or her pastoral or professional duties.
    - Any person who is admitted to practice law in California who provides counseling services as part of his or her professional practice.
    - Any person who is licensed to practice medicine who provides counseling services as part of his or her professional practice.

24) Clarifies that LPCC laws would not apply to an employee of a governmental entity or of a school, college or university, or of an institution both nonprofit and charitable if the practice is performed under the employer's supervision. (B&P Code § 4999.22(d))

25) Clarifies that LPCC laws do not restrict activities of a psychotherapeutic nature on the part of persons employed by the following entities engaged in the training of graduate students or professional counselor trainees provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by a title that clearly indicates the status appropriate to the level of training: (B&P Code § 4999.24)
    - Accredited or state-approved academic institution
    - Public school
    - Government agency
    - Nonprofit institution

26) Prohibits a person from practicing or advertising the performance of professional clinical counseling services without a license issued by the Board. (B&P Code § 4999.30)

27) Requires the following educational qualifications for licensure as a LPCC if the applicant began graduate study before August 1, 2012: (B&P Code § 4999.32)
    - A master's or doctor's degree from an accredited or approved school that is counseling or psychotherapy in content. (B&P Code § 4999.32(b))

    - A minimum of 48 semester or 72 quarter graduate units of instruction. (B&P Code § 4999.32(c))

- The equivalent of at least three semester or four and one-half quarter units included within the 48 semester or 72 quarter units, in each of the following areas: (B&P Code § 4989.22(c)(1))
    1. Counseling and psychotherapeutic theories and techniques
    2. Human growth and development across the lifespan, including normal and abnormal behavior
    3. Career development theories and techniques
    4. Group counseling theories and techniques
    5. Assessment and testing of individuals
    6. Multicultural counseling theories and techniques
    7. Principles of the diagnostic process, differential diagnosis, use of current diagnostic tools including the use of the Diagnostic and Statistical Manual of Mental Disorders (DSM),established diagnostic criteria for mental and emotional disorders.
    8. Research and evaluation
    9. Professional orientation, ethics and law in counseling

28) Requires the qualifying degree referenced in # 28 to include a minimum of 12 semester units or 18 quarter units of additional coursework to develop knowledge of specific treatment issues or special population issues. (B&P Code § 4999.32(c)(2))

29) Requires the degree to contain the required units in seven of the nine required subject areas, but all nine areas must be completed upon application by completing post-degree coursework at an accredited or approved institution consisting of the equivalent of three semester or four and one-half quarter units in each deficient area. (B&P Code § 4999.32(d)(1) and (2))

30) Permits the board to make the final determination as to whether a degree meets all requirements including but not limited to course requirements, regardless of accreditation. (B&P Code § 4999.32(d)(3))

31) Requires a minimum of six semester or nine quarter of supervised practicum or field study experience, or the equivalent, in a clinical or counseling setting that provides a range of experience, as follows: (B&P Code § 4999.32(c)(3))
    - 150 hours face-to-face supervised experience counseling individuals, families, or groups.
    - Applied psychotherapeutic techniques.
    - Assessment, diagnosis, prognosis and treatment.
    - Development, adjustment and maladjustment.
    - Health and wellness promotion.
    - Other recognized counseling interventions.

32) Requires applicants who begin study before August 1, 2012 and completing study before December 31, 2018, must complete all of the following coursework or training prior to registration as an intern: (B&P Code § 4999.32(e))
    - A minimum of 15 contact hours of alcoholism and other chemical substance dependency.
    - Human sexuality. Minimum of 10 hours required.
    - A two semester unit of thee quarter unit survey course in Psychopharmacology.
    - A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies
    - Child abuse assessment and reporting. Minimum of seven hours required.
    - California law and professional ethics for professional counselors. Minimum of two semester or three quarter units required.
    - A minimum of 10 hours of instruction in aging and long-term care.

- A minimum of 15 contact hours of instruction in crisis or trauma care.

33) Requires the following educational qualifications for licensure as a LPCC, if the applicant begins graduate study on or after August 1, 2012 or begins before August 1, 2012 but fails to complete study before December 31, 2018: (B&P Code § 4999.33)

- A master's or doctor's degree from an accredited or approved school that is counseling or psychotherapy in content, as defined, and contains not less than 60 graduate semester or 90 graduate quarter units of instruction in all of the following: (B&P Code § 4999.33(c)(1))
    - Counseling and psychotherapeutic theories and techniques
    - Human growth and development across the lifespan, including normal and abnormal behavior
    - Career development theories and techniques
    - Group counseling theories and techniques
    - Assessment and testing of individuals
    - Multicultural counseling theories and techniques
    - Principles of diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior including the use of the Diagnostic and Statistical Manual of Mental Disorders (DSM).
    - Research and evaluation
    - Professional orientation, ethics and law in counseling
    - Psychopharmacology
    - Addictions, substance abuse and co-occurring disorders
    - Crisis and trauma counseling
    - Advanced counseling and psychotherapeutic theories

- Requires a minimum of six semester or nine quarter of supervised practicum or field study experience, or the equivalent, in a clinical or counseling setting that provides a range of experience, as follows: (B&P Code § 4999.33(c)(3)))

    - 280 hours face-to-face supervised experience counseling individuals, families, or groups.
    - Applied psychotherapeutic techniques.
    - Assessment, diagnosis, prognosis and treatment.
    - Development, adjustment and maladjustment.
    - Health and wellness promotion.
    - Other recognized counseling interventions.
    - Professional writing, as specified.
    - How to find and use resources.

- Requires the degree to include a minimum of 15 semester units or 22.5 quarter units of additional coursework to develop knowledge of specific treatment issues or special population issues and instruction in all of the following: (B&P Code § 4999.33(c)(2), (d))

    - The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.
    - The understanding of human behavior within the social context of a representative variety of the cultures found within California.
    - Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.
    - An understanding of the effects of socioeconomic status on treatment and available resources.

- Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.
- Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill and collaborative treatment.
- Human sexuality.
- Spousal or partner abuse assessment.
- Child abuse assessment and reporting.
- Aging and long term care.

- A degree program that qualifies for licensure under this section shall do all of the following: (B&P Code § 4999.33(e))
  - Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.
  - Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.
  - Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

- Requires the degree to contain the required units in 10 of the 13 required subject areas, but all 13 areas must be completed upon application by completing post-degree coursework at an accredited or approved institution consisting of the equivalent of three semester or four and one-half quarter units in each deficient area. (B&P Code § 4999.33(f))

34) Requires practicum or field experience to be in a clinical or counseling setting that meets the following requirements: (B&P Code § 4999.34)
- Lawfully and regularly provides counseling or psychotherapy
- Provides oversight to ensure that the trainee's work meets the practicum and field study requirements and is within the scope of practice
- Is not a private practice

35) Requires trainees and interns to gain experience only within the position for which he or she volunteers or is employed. (B&P Code § 4999.34(d), 4999.44(a)(3))

36) Permits trainees to perform services if the activities and services constitute part of the trainee's supervised course of study and the person's title is "counselor trainee." (B&P Code § 4999.36(a))

37) Requires all hours of experience gained as a trainee to be coordinated between the school and the work site. (B&P Code § 4999.36(b))

38) Requires schools to approve the work site of each trainee, and to have a written agreement with each site that details each party's responsibilities including the methods by which supervision must be provided. Requires the agreement to include provisions for regular progress reports and evaluations of the student's performance at the site. (B&P Code § 4999.36(b))

39) Requires the applicant to provide satisfactory evidence that hours of experience gained as a trainee while enrolled in an institution other than the one that confers the qualifying degree

were gained in compliance with all trainee requirements. (B&P Code § 4999.36(c))

40) Prohibits hours earned as a trainee from counting toward the 3,000 hours of post-degree internship hours. (B&P Code § 4999.36(e))

41) Requires a trainee to receive at least one hour of individual or triadic supervision and two hours of group supervision for each week the trainee sees clients, for a total of three supervision hours per week. (B&P Code § 4999.36(f))
    - Defines "individual supervision" as face-to-face contact with the supervisor alone
    - Defines "group supervision" as face-to-face contact with the supervisor in a group of not more than eight persons.

42) Requires a school that is preparing applicants to qualify for LPCC licensure to notify each student in writing that its degree program is designed to meet licensing requirements and to certify to the Board that it has so notified its students. (B&P Code § 4999.40(a))

43) Requires an applicant trained at an educational institution outside of the United States to demonstrate that the qualifying degree is equivalent to a degree earned from an institution of higher education that is accredited or approved. Requires the applicant to submit a comprehensive evaluation of the degree performed by a foreign credential evaluation service. (B&P Code § 4999.40(b))

44) Requires the following qualifications for registration as an intern: (B&P Code § 4999.42)
    - Has earned a qualifying master's or doctorate degree.
    - Has completed all additional coursework as required.
    - Has not committed acts constituting grounds for denial of licensure.
    - Has not been convicted of a crime that involves sexual abuse of children and is not required to register as a sex offender.

47) Requires the board to begin accepting applications for intern registration on January 1, 2011. (B&P Code § 4999.42(b))

48) Permits interns to be credited with supervised experience in any setting that lawfully and regularly provides counseling or psychotherapy and provides oversight to ensure that the intern's work meets experience and supervision requirements and is within the scope of practice. (B&P Code § 4999.44(a))

49) Prohibits applicants or trainees from being employed or volunteering in a private practice until registered as an intern. (B&P Code § 4999.44(a)(4))

50) Requires an applicant to be registered with the Board as an intern prior to performing any duties other than those provided by trainees. (B&P Code § 4999.45(a))

51) Prohibits interns from working in a private practice until registered as an intern. (B&P Code § 4999.45(b))

52) Requires counselor trainees and interns to inform each client prior to performing any professional services that he or she is unlicensed and under supervision. (B&P Code § § 4999.36(d), 4999.45(c))

53) Requires interns to file for renewal annually for a maximum of five years after initial registration. (B&P Code § 4999.45(d))

54) Requires employment as an intern to cease after six years, unless the applicant meets current

educational requirements and obtains a new intern registration. (B&P Code § 4999.45(e),(f))

- Permits an applicant issued a subsequent intern registration to be employed or volunteer in any allowable work setting except private practice.

55) Requires applicants for licensure to have completed 3,000 hours (minimum of 104 weeks) of supervised experience that meets the following requirements: (B&P Code § 4999.46)

- Performed under the supervision of an approved supervisor.
- Includes a maximum of 40 hours in any seven consecutive days.
- Includes a minimum of 1750 hours of direct counseling with individuals or groups in a clinical or counseling setting.
- Includes a minimum of 150 hours in a hospital or community mental health setting.
- Includes a maximum of 1000 hours of direct supervision and professional enrichment activities.
- Includes a maximum of 500 hours providing group therapy or group counseling.
- Includes a maximum of 250 hours of experience administering and evaluating psychological tests, writing clinical reports, progress notes or process notes.
- Includes a maximum of 250 hours providing counseling or crisis counseling on the telephone.
- Performed within the six years immediately preceding the application for licensure.

56) Requires applicants apply for intern registration within 90 days of the granting of the qualifying degree and to register with the Board as an intern in order to be credited for post-degree hours of experience toward LPCC licensure. (B&P Code § 4999.46(c))

57) Requires applicants and interns to be under supervision at all times. (B&P Code § 4999.46(d))

58) Prohibits a supervisor from supervising more than two interns. (B&P Code § 4999.46(d))

59) Requires supervision of interns to meet all of the following requirements: (B&P Code § 4999.46(e))

- Includes at least one hour of direct supervisor contact during each week and for each work setting in which experience is claimed.
- Includes an average of one hour of direct supervisor contact for every 10 hours of client contact in each setting.
    - A maximum of five hours of supervision will be credited during any week.
    - One hour of direct supervisor contact means face-to-face contact on an individual basis, or two hours of face-to-face contact in a group of not more than eight.
    - Up to 30 hours of supervision may be gained via two-way, real-time videoconferencing for an intern working in an exempt setting.

60) Prohibits counselor trainees and interns from working as independent contractors. (B&P Code § 4999.47(a))

61) Prohibits applicants, trainees, and interns from receiving any remuneration directly from patients or clients, and encourages employers to provide fair remuneration. (B&P Code § 4999.47(b),(c))

62) Requires applicants, trainees, and interns who provide voluntary or other services in any setting other than a private practice, and who receive no more than a total, from all work settings, of $500 per month as reimbursement for expenses incurred, to be considered an employee and not an independent contractor. (B&P Code § 4999.47(d),(e))

- Permits the Board to audit such applicants, who must demonstrate that the payments received were for reimbursement of expenses actually incurred.

63) Requires applicants, trainees, and interns to perform services only at the location where their employer regularly conducts business and services, which may include other locations as long as the services are performed under the direction and control of the employer and supervisor. (B&P Code § 4999.47(f))

64) Prohibits trainees and interns from having a proprietary interest in the employer's business. (B&P Code § 4999.47(f))

65) Requires educational institutions that prepare applicants for LPCC licensure to encourage and to consider requiring its students to participate in psychotherapy or counseling. Requires supervisors to consider, advise, and encourage each of his or her professional counselor interns and trainees regarding the advisability of participating in psychotherapy or counseling. Encourages educational institutions to assist students and supervisors to assist trainees and interns in locating psychotherapy or counseling at a reasonable cost. (B&P Code § 4999.47(g))

66) Requires the Board to adopt regulations regarding the supervision of interns, including but not limited to: (B&P Code § 4999.48)
- Supervisor qualifications, including continuing education requirements
- Registration or licensing of supervisors.
- General responsibilities of supervisors.
- The Board's authority in cases of supervisor noncompliance or negligence.

67) Permits the Board to issue a LPCC license to any person who meets all of the following requirements: (B&P Code § 4999.50)
- Has received a qualifying master's or doctorate degree.
- Has completed the required 3,000 hours of supervised experience.
- Provides evidence of a passing score on an examination approved by the Board.
- Meets the Board's regulatory requirements for licensure.
- Has not committed acts or crimes constituting grounds for denial of licensure.
- Has not been convicted of a crime in this or another state or territory of the United States that involves sexual abuse of children and is not required to register as a sex offender.
- Has passed a fingerprint check.

68) Requires the Board to begin accepting applications for licensure on January 1, 2012. (B&P Code § 4999.50(c))

69) Permits the Board to issue a LPCC license to any person that applies for licensure after January 1, 2014, who at the time of submitting an application holds a valid license outside California as a professional counselor, or an equivalent title if: (B & P Code § 4999.60(a) and (b))
- The education and supervised experience requirements are substantially equivalent.
- The person has passed an examination required by the Board.

70) Requires applicants for licensure as an LPCC to successfully pass a state and federal level criminal offender record information search conducted through the Department of Justice. (B&P Code § 4999.51(c))

71) Requires the LPCC licensing examination to be administered a minimum of twice per year at a time and place and under supervision, at the Board's determination. (B&P Code § 4999.52(b))

72) Requires the Board to evaluate various national examinations to determine whether they: (B&P Code § 4999.52(c))
- Meet the prevailing standards for the validation and use of licensing and certification

tests in California.

- Measure knowledge and abilities demonstrably important to safe, effective LPCC practice.
    - Should a national examination not meet the above standards, the Board may develop and require a supplemental examination in addition to a national examination.

73) Prohibits the Board from denying an applicant admission to the examination whose application for licensure is complete if he or she meets all requirements and has not committed any acts or engaged in conduct that would constitute grounds to deny licensure. (B&P Code § 4999.52(d))

74) Prohibits the Board from postponing or delaying an applicant's examination or results solely because the Board has received a complaint alleging acts or conduct that would constitute grounds to deny licensure. (B&P Code § 4999.52(e))

75) Requires the Board to permit an applicant who is the subject of a complaint or under investigation for a reason that would constitute grounds for denial of licensure to take the examination. Permits the Board to notify the applicant that licensure will not be granted pending completion of the investigation. (B&P Code § 4999.52(f))

76) Permits the Board to deny an applicant who has previously failed the examination permission to retake the examination pending completion of an investigation against that applicant. (B&P Code § 4999.52(g))

77) Permits the Board to deny an applicant admission to an examination, withhold results, or refuse to issue a license when an accusation or statement of issues has been filed against the applicant, or when his or her application for licensure has been denied. (B&P Code § 4999.52(h))

78) Permits the Board to destroy all examination materials two years following the date of an examination. (B&P Code § 4999.52(i))

79) Permits the Board to issue a LPCC license to any person who meets one of the following sets of criteria (A, B or C) and who applies between January 1, 2011 and June 30, 2011, provided all documentation is submitted within 12 months of the board's evaluation of the application. This section is referred to as the "grandparenting provisions": (B&P Code § 4999.54)

A. Meets the following requirements:

1. Possesses a qualifying degree that is counseling and psychotherapy in content which meets the same requirements as for "regular" counselor licensure except as follows:
    - Degrees issued <u>prior to</u> 1996 must have a minimum of 30 semester or 45 quarter units and must include at least <u>five of the nine</u> required courses.
    - Degrees issued in 1996 <u>and after</u> must have a minimum of 48 semester or 72 quarter units and must include at least <u>seven of the nine</u> required courses.
        - If the degree is lacking in any of the nine required courses or in overall units, documentation of completion must be provided.
        - A counselor educator whose degree contains at least seven of the nine required courses shall be given credit for a course not contained in the degree if documentation is provided that he or she taught the equivalent of the required course in a graduate program in counseling or a related area.

2. Completes post-degree coursework required for regular licensure (i.e., human

sexuality, child abuse assessment and reporting, spousal and partner abuse, etc.)

3. Has two years full time, or the equivalent, of post-degree counseling experience that includes 1,500 hours of direct client contact supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, or a master's level counselor certified by a national certifying or registering organization, including but not limited to the National Board for Certified Counselors or the Commission on Rehabilitation Counselor Certification.

4. Has a passing score on **all** of the following examination(s):

- The National Certified Counselor Examination for Licensure and Certification (NCE) OR the Certified Rehabilitation Counselor Examination (CRCE)
- The National Clinical Mental Health Counseling Examination (NCMHCE).
- A California jurisprudence and ethics examination, when developed by the board.

B. Meets the following two requirements:

1. Is licensed as a Marriage and Family Therapist (MFT) in California
2. Meets LPCC coursework requirements

3. Passes one of the specified examinations described in #4 above or the MFT licensure examination.

C. Meets the following two requirements:

1. Is licensed as a Licensed Clinical Social Worker (LCSW) in California
2. Meets LPCC coursework requirements

3. Passes one of the specified examinations described in #4 above or the LCSW licensure examination.

80) Limits a license issued under "A" (above) of the grandparenting provisions (Section 4999.54) to being valid for a six-year period from its issuance date and must be issued on or before December 1, 2010. After the six-year period, such a license will be canceled unless the licensee does both of the following during the next renewal period: (B&P Code § 4999.56)

- Obtains a licensure renewal
- Passes the examination required for licensure on or after July 1, 2012, or documents that he or she already passed those examinations

81) Provides that a licensed issued under "A" (above) of the grandparenting provisions shall expire one year from the last day of the month during which it was issued. (B&P Code §4999.101(a))

82) Sets forth the following requirements for renewing a license issued under "A" of the grandparenting provisions: (B&P Code §4999.101(b))

- Apply for renewal on a form prescribed by the board and pay the renewal fee.
- Meet continuing education requirements.
- Notify the board whether he or she has been convicted of a misdemeanor or felony, or whether any disciplinary action has been taken subsequent to the license's last renewal.

83) Requires a LPCC to display his or her license in a conspicuous place in his or her primary place of practice. (B&P Code § 4999.70)

84) Prohibits a LPCC who conducts a private practice under a fictitious business name from using a name that is false or misleading. Requires the LPCC to inform the patient prior to the commencement of treatment of the name and license type of the owner of the practice. (B&P Code § 4999.72)

85) Requires LPCCs to provide each client with accurate information about the counseling relationship and the counseling process. (B&P Code § 4999.74)

86) Requires LPCCs to complete 36 contact hours of continuing education in a related field by an approved provider every two years. (B&P Code § 4999.76)

87) Prohibits the Board from renewing a license unless the applicant certifies to the Board that he or she has completed the required continuing education. (B&P Code § 4999.76(a))

88) Authorizes the Board to audit the records of any licensee to verify completion of the required continuing education, and requires licensees to maintain records of completed continuing education for two years. (B&P Code § 4999.76(b))

89) Requires continuing education to be obtained from one of the following approved providers: (B&P Code § 4999.76(d))
    - School, college, or university that offers a qualifying LPCC degree program.
    - Professional counseling association or mental health professional association.
    - Licensed health facility or governmental entity.
    - Continuing education unit of an accredited or state-approved four-year educational institution.

90) Requires the Board to establish by regulation a procedure for approving continuing education providers. (B&P Code § 4999.76(e))

91) Permits the Board to revoke or deny the right of a provider to offer continuing education for failure to comply with requirements. (B&P Code § 4999.76(e))

92) Requires continuing education to contain one or more of the following: (B&P Code § 4999.76(f))
    - Aspects of professional counseling that are fundamental to the understanding or practice of professional counseling.
    - Recent developments in professional counseling.
    - Aspects of other disciplines that enhance the understanding or practice of professional counseling.

93) Requires continuing education to include courses directly related to the diagnosis, assessment, and treatment of clients. (B&P Code § 4999.76(g))

94) Requires the Board to fund the administration of its continuing education program through continuing education provider fees. (B&P Code § 4999.76(h))

95) Requires continuing education requirements to comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs. (B&P Code § 4999.76(i))

96) Requires the Board to enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners and to investigate complaints concerning the conduct of any LPCC. (B&P Code § 4999.80(a))

97) Requires the Board to revoke, suspend, or fail to renew a LPCC license for just cause, as enumerated in the Board's laws. (B&P Code § 4999.80(c))

98) Permits the Board to deny a LPCC license for any of the following reasons: (B&P Code § 4999.80(c))
- The applicant knowingly made a false statement of fact required in the application.
- The applicant has been convicted of a crime substantially related to the qualifications, functions or duties of LPCC practice.
- The applicant has committed an act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another, substantially related to the qualifications, functions or duties of LPCC practice.
- The applicant has committed an act which would be grounds for suspension or revocation of license.

99) Permits the Board to deny, suspend or revoke a LPCC license for any of the following reasons: (B&P Code § 4999.80(c))
- Violation of examination security requirements
- License was secured by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.
- A licensee knowingly made a false statement or knowingly omitted to state a fact to the Board regarding another person's application for license.

100) Prohibits persons from engaging in the following acts: (B&P Code § 4999.82)
- Engaging in LPCC practice without holding a valid license.
- Representing themselves as an LPCC without being licensed.
- Using any title, words, letters, or abbreviations which may reasonably be confused with a standard of professional competence without being licensed.
- Refusing to furnish the Board with information or records required or requested.

101) Establishes the intent of the Legislature that any communication made by a client to a LPCC is a privileged communication. (B&P Code § 4999.84)

102) Establishes that any person who violates any of the provisions of LPCC law is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment. (B&P Code § 4999.86)

103) Permits the superior court to issue an injunction or other order to restrain conduct upon request of the Board, the Attorney General, or the district attorney of the county, when any person has or is about to engage in any acts or practices which constitute an offense against LPCC law. (B&P Code § 4999.88)

104) Permits the Board to refuse to issue any registration or license, or to suspend or revoke a registration or license of any professional counselor intern or licensed professional counselor if he or she has been guilty of unprofessional conduct. (B&P Code § 4999.90)

105) Defines unprofessional conduct as including, but not being limited to, any of the following: (B&P Code § 4999.90)
- The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant.
    - The Board may inquire into the circumstances surrounding the commission of the crime.
- Securing a license or registration by fraud or deceit
- Misrepresentation by the applicant, or a licensee in support of the applicant, on any

application for licensure or registration.

- Administering to himself or herself any controlled substance, dangerous drug, or alcoholic beverage in a manner which is dangerous or injurious to the person who is applying for or holding a license or registration, or to any other person, or to the extent that use impairs ability to safely practice as a LPCC.
- The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any controlled substance, dangerous drug, or alcoholic beverage.
- Gross negligence or incompetence in the performance of LPCC services.
- Violating, attempting to violate, or conspiring to violate any of the laws pertaining to professional counseling.
- Misrepresentation as to the type or status of a license or registration held.
- Misrepresentation or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations.
- Impersonation of another by any licensee, registrant, applicant for a license, or registrant, or allowing another person to use his or her license or registration.
- Assisting or employing, directly or indirectly, any unlicensed or unregistered person to engage in practice for which a license or registration is required.
- Intentionally or recklessly causing physical or emotional harm to any client.
- The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.
- Engaging in sexual relations with a client or a former client within two years following termination of therapy.
- Soliciting sexual relations with a client or committing an act of sexual abuse or misconduct with a client.
- Committing an act punishable as a sexually related crime if that act is substantially related to the qualifications, functions, or duties of a LPCC.
- Performing or holding oneself out as able to perform, or offering to perform, or permitting any supervisee to perform any professional services beyond the scope of the license.
- Failure to maintain confidentiality except as otherwise permitted by law.
- Prior to the commencement of treatment, failing to disclose to the client the fee to be charged or the basis upon which the fee will be computed.
- Paying, accepting, or soliciting any consideration or compensation, whether monetary or otherwise, for the referral of clients.
- Advertising in a manner that is false, misleading, or deceptive.
- Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, in ways that might invalidate the test or device.
- Any conduct in the supervision of an intern or trainee that violates LPCC law.
- Performing or holding oneself out as able to perform professional services beyond the scope of one's competence.
- Permitting a supervisee to hold himself or herself out as competent to perform professional services beyond the supervisee's scope of competence.
- The violation of any law governing the gaining and supervision of experience.
- Failure to keep records consistent with sound clinical judgment.
- Failure to comply with child, elder, or dependent adult abuse reporting requirements.
- Repeated acts of negligence.

106) Specifies that an intern registration shall expire one year from the last day of the month in which it was issued. (B&P Code § 4999.100(a))

107) Requires an intern to do all of the following in order to renew: (B&P Code § 4999.100(b))

- Apply for renewal on a Board-issued form and pay the required fee
- Notify the Board whether he or she has been convicted of a misdemeanor or felony or whether any disciplinary action has been taken by any other regulatory or licensing Board since the last renewal.

108) Specifies that a LPCC license issued to the following shall expire no more than 24 months after the issue date: (B&P Code § 4999.102(a))

- Licenses issued to applicants that qualified under the grandparenting provision by current licensure as a MFT or LCSW
- After January 1, 2017, licenses issued to applicants under the general grandparenting provisions
- Licenses issued pursuant to this Act after the grandparenting period.

109) Requires a LPCC to do the following in order to renew an unexpired license: (B&P Code § 4999.102(b))
- Apply for renewal on a Board-issued form.
- Pay the required renewal fee.
- Certify compliance with continuing education requirements.
- Notify the Board whether he or she has been convicted of a misdemeanor or felony or whether any disciplinary action has been taken by any other regulatory or licensing Board since the last renewal.

110) Allows an expired LPCC license to be renewed at any time within three years of expiration, except for licenses issued under the general grandparenting provisions. (B&P Code § 4999.104)

111) Requires the licensee to do the following in order to renew an expired LPCC license: (B&P Code § 4999.104)
- Apply for renewal on a Board-issued form.
- Pay the renewal fees that would have been paid if the license had not been delinquent.
- Pay all delinquency fees.
- Certify compliance with continuing education requirements.
- Notify the Board whether he or she has been convicted of a misdemeanor or felony or whether any disciplinary action has been taken by any other regulatory or licensing Board since the last renewal.

112) Prohibits a license that has not been renewed within three years after its expiration from being renewed, restored, reinstated or reissued. Permits a former licensee to apply for and obtain a new license if he or she complies with all of the following: (B&P Code § 4999.106)
- No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.
- He or she takes and passes the current licensing examination.
- He or she submits an application for licensure.

113) Establishes that a suspended license is subject to expiration and must be renewed as required, and that the renewal does not entitle the licensee to practice or engage in prohibited conduct while it remains suspended. (B&P Code § 4999.108)

114) Establishes that a revoked license is subject to expiration but may not be renewed. If it is reinstated after expiring, the licensee must pay a reinstatement fee equal to the last renewal fee plus any delinquency fee owing at the time of revocation. (B&P Code § 4999.110)

115) Permits a LPCC to apply to the Board to request his or her license be placed on inactive status,

and requires a licensee on inactive status to do all of the following. (B&P Code § 4999.112(a))

- Pay a biennial fee of half of the active renewal fee.
- Be exempt from continuing education requirements.
- Not engage in LPCC practice in California.
- Be subject to LPCC-related laws.

116) Permits reactivation of an inactive license by submitting a request to the Board and: (B&P Code § 4999.112(b))

- Certifying that he or she has not committed any acts or crimes constituting grounds for denial of licensure.
- Paying the remaining half of the renewal fee.
- Showing proof of completion of 18 hours of continuing education within the past two years if the license will expire in less than one year (or 36 hours if the license will expire in more than one year).

117) Requires the Board to report each month to the Controller the amount and source of all revenue received under the LPCC chapter and deposit the entire amount in the State Treasury for credit to the Behavioral Sciences Fund. (B&P Code § 4999.114)

118) Requires moneys credited to the Behavioral Sciences Fund to be used by the BBS for carrying out and enforcing the provisions of the LPCC chapter. (B&P Code § 4999.116(a))

119) Requires the Board to keep records that will reasonably ensure that funds expended in the administration of each licensing or registration category bear a reasonable relation to the revenue derived from each category, and to notify the department of such by May 31 of each year. (B&P Code § 4999.116(b))

120) Permits the Board to use any surpluses in a way which bears a reasonable relation to the revenue derived from each category, including but not limited to, expenditures for education and research related to each of the licensing or registration categories. (B&P Code § 4999.116(c))

121) Requires a licensee or registrant to give written notice to the Board of any name change within 30 days, including a copy of the legal document authorizing the change. (B&P Code § 4999.118)

122) Requires the Board to assess fees for the application for and registration of interns and for issuance and renewal of licenses to cover related administrative and operating expenses. Fees shall not exceed the following: (B&P Code § 4999.120)

a. Application for initial licensee fee of $180

b. Jurisprudence and ethics examination fee of $100

c. Written examination fee of $250

d. Issuance of initial license fee of $200

e. Annual renewal fee of $150

f. Annual renewal fee for Intern registration of $100

g. Two year renewal fee of $200

123) Requires the licensing program to be supported from fees assessed to applicants, interns and

licensees. (B&P Code § 4999.122)

124) Requires start-up funds to implement this program to be derived as a loan from the reserve fund of the Board, with the approval of the board and subject to an appropriation by the Legislature in the Budget Act. (B&P Code § 4999.122)

125) Does not require the Board to implement the program until funds have been appropriated. (B&P Code § 4999.122)

126) Adds LPCCs to the list of mandated child abuse reporters. (Penal Code § 11165.7(a)(38))

Comment:

1) **Author's Intent.** According to the sponsor, the California Coalition for Counselor Licensure, licensure of professional counselors is needed in California for several reasons:

   - To address the documented shortage of mental health workers
   - To broaden accessibility to mental health services to meet an increasing need
   - To provide qualified people the ability to serve when counselors are deployed to federal disaster areas
   - To keep California competitive, as LPCC licensure exists in 49 other states

   The sponsor believes there are benefits of licensure to counselors and consumers:

   - Provides consumers with a wider range of therapists competent to work with diverse populations, issues, and programs
   - Allows portability of credentials from state to state
   - Third party payments can provide financial support to consumers for services provided by LPCCs.

2) **Prior Legislation.** In 2005 the sponsor previously introduced legislation that proposed to license professional counselors (AB 894, LaSuer, 2005). The Board took a position of "oppose unless amended" on the prior legislation due to concerns regarding the necessity for licensure, scope of practice, timelines, funding, and grandparenting provisions. That bill was held in Appropriations Committee.

   In 2007 the sponsor introduced AB 1486 (Calderon). The Board took an initial support position on this bill and later revised its position to a "support if amended" at its May 28, 2008 meeting. The Board requested that the sponsor amend the bill to incorporate curriculum changes being proposed for MFTs in SB 1218 (the previous MFT curriculum bill vetoed by the Governor in 2008). AB 1486 was subsequently amended to include all the changes requested by the Board, however, the bill failed to pass out of Senate Appropriations Committee. The bill before the Committee today, SB 788, is virtually identical to AB 1486.

3) **Educational Requirements.** SB 33 is currently pending and would make a number of significant changes to MFT education for persons who begin graduate study on or after August 1, 2012. Many of these proposed changes are in response to the Mental Health Services Act (MHSA), which was passed by California voters as proposition 63 in November 2004. The proposed changes to MFT education in SB 33 include the following:

   - More flexibility in the curriculum requirements, such as fewer requirements for specific hours or units for particular coursework, to allow for innovation in curriculum design.

   - Practicum changes including:
     - An additional 75 client contact hours (total 225), which may include client centered

advocacy
  - Training in the applied use of theory, working with families, documentation skills, and how to find and use resources
  - Require students to be enrolled in a practicum course while seeing clients

- Infusion of the culture and norms of public mental health work and principles of the Mental Health Services Act throughout the curriculum, including the following:
  - Recovery oriented care and related methods of service delivery
  - Providing opportunities to meet with consumers and family members
  - Greater emphasis on culture throughout the degree program
  - Greater understanding of the impact of socioeconomic position

- Added instruction in areas needed for practice in a public mental health environment which may be provided in credit level coursework or through extension programs, including the following:
  - Case management
  - Working with the severely mentally ill
  - Collaborative treatment
  - Disaster and trauma response

- Degree program content to include instruction in:
  - Evidence based and best practices
  - End-of-life and grief
  - Co-occurring mental health and substance use disorders
  - Behavioral addiction
  - Psychosexual dysfunction
  - Differences in legal and ethical standards for different types of work settings
  - Licensing law and licensing process

- Certain coursework, such as California law and ethics and child abuse assessment and reporting, which are currently required prior to licensure (and permitted to be taken outside of the degree program), instead to be completed prior to registration as an intern and within the degree program.

  Board staff has worked extensively with the sponsor of SB 788 (and previous legislation) to ensure that the experience and education requirements for LPCCs are comparable to those proposed for MFTs in SB 33.

9) **Suggested Amendments.** Staff suggests the following amendments:

- **B&P Code section 4999.46:** Permit interns applicants to count some hours of experience for performing "client centered advocacy" activities.
- **B&P Code section 4999.51:** Require registrants to meet the fingerprint requirements provided for in this bill.
- **B&P Code section 4999.50(c):** Replace reference to January 2012 and replace with January 1, 2011 as it relates to the Board accepting application for LPCC licensure to create consistency within the Act.
- **B&P Code section 4999.76:** Allow, at Board discretion, licensees to complete less than 36 units of continuing education.

10) Support and Opposition

Support: California Coalition for Counselor Licensure (CCCL, sponsor)

Oppose: None on file.

11) History

2009

Mar. 19	To Coms. on B., P. & E.D. and PUB. S.
Mar. 2	Read first time.
Feb. 28	From print. May be acted upon on or after March 30.
Feb. 27	Introduced. To Com. on RLS. for assignment. To print.

SENATE BILL No. 788

Introduced by Senators Wyland and Steinberg

February 27, 2009

An act to amend Sections 728, 805, and 4990 of, to add Chapter 16 (commencing with Section 4999.10) to Division 2 of, and to repeal Sections 4999.32, 4999.56, 4999.58, and 4999.101 of, the Business and Professions Code, and to amend Section 11165.7 of the Penal Code, relating to professional clinical counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 788, as introduced, Wyland. Licensed professional clinical counselors.

(1) Existing law provides for the licensure and regulation of marriage and family therapists and clinical social workers by the Board of Behavioral Sciences, in the Department of Consumer Affairs. Under existing law, the board consists of 11 members.

This bill would provide for the licensure, registration, and regulation of licensed professional clinical counselors and interns by the board and would add 4 additional members to the board, to be appointed by the Governor. The bill would enact various provisions concerning the practice of licensed professional clinical counselors, interns, and counselor trainees, including, but not limited to, practice requirements, and enforcement specifications. The bill would authorize the board to begin accepting applications for intern registration on January 1, 2011, and for professional clinical counselor licensure on January 1, 2012, but would authorize the board to issue licenses to individuals meeting certain criteria who apply between January 1, 2011, and June 30, 2011. The bill would authorize the board to impose specified fees on licensed professional clinical counselors and interns which would be deposited in the Behavioral Sciences Fund to carry out the provisions of the bill.

The bill would require that the startup costs of the program be funded by a loan from the Behavioral Sciences Fund, upon appropriation by the Legislature. The bill would provide that a violation of its provisions is a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of up to 6 months, a fine of up to $1,000, or by both that imprisonment and fine.

This bill would add licensed professional clinical counselors, counselor trainees, and unlicensed professional clinical counselor interns to the list of individuals who are mandated reporters. By imposing the reporting requirement on a new class of persons, the violation of which would be a crime, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, *a licensed professional clinical counselor,* a psychological assistant, *a* marriage and family therapist registered intern or trainee, *an intern or trainee as specified in Chapter 16 (commencing with Section 4999.10),* or *an* associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

SEC. 2. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(C) Any medical, psychological, marriage and family therapy, social work, *licensed professional clinical counseling,* dental, or

podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, *licensed professional clinical counselor,* or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of

any of the following that occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause

or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a

licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates

of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 3. Section 4990 of the Business and Professions Code is amended to read:

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of ~~11~~ *15* members composed as follows:

(1) Two state licensed clinical social workers.

(2) One state licensed educational psychologist.

(3) Two state licensed marriage and family therapists.

(4) Two licensed professional clinical counselors.

~~(4) Six~~

(5) Eight public members.

(b) Each member, except the ~~six~~ *eight* public members, shall have at least two years of experience in his or her profession.

(c) Each member shall reside in the State of California.

(d) The Governor shall appoint ~~four~~ *six* of the public members and the ~~five~~ *seven* licensed members with the advice and consent of the Senate. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.

(i) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 4. Chapter 16 (commencing with Section 4999.10) is added to Division 2 of the Business and Professions Code, to read:

Chapter 16. Licensed Professional Clinical Counselors

Article 1. Administration

4999.10. This chapter constitutes, and may be cited as, the Licensed Professional Clinical Counselor Act.

4999.12. For purposes of this chapter, the following terms have the following meanings:

(a) "Board" means the Board of Behavioral Sciences.

(b) "Accredited" means a school, college, or university accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

(c) "Approved" means a school, college, or university that possessed unconditional approval by the Bureau for Private Postsecondary and Vocational Education at the time of the applicant's graduation from the school, college, or university.

(d) "Applicant" means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, and whose application for registration as an intern is pending or who is in the examination process, or an unlicensed person who has completed the requirements for licensure specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

(e) "Licensed professional clinical counselor" or "LPCC" means a person licensed under this chapter to practice professional clinical counseling, as defined in Section 4999.20.

(f) "Intern" means an unlicensed person who meets the requirements of Section 4999.42 and is registered with the board.

(g) "Counselor trainee" means an unlicensed person who is currently enrolled in a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, that is designed to qualify him or her for licensure under this chapter, and

who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(h) "Approved supervisor" means an individual who meets the following requirements:

(1) Has documented two years of clinical experience as a licensed professional clinical counselor, licensed marriage and family therapist, licensed clinical psychologist, licensed clinical social worker, or licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has received professional training in supervision.

(3) Has not provided therapeutic services to the counselor trainee or intern.

(4) Has a current and valid license that is not under suspension or probation.

(i) "Professional enrichment activities" includes the following:

(1) Workshops, seminars, training sessions, or conferences directly related to professional clinical counseling attended by the applicant and approved by the applicant's supervisor.

(2) Participation by the applicant in group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

(j) "Advertising" or "advertise" includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(k) "Referral" means evaluating and identifying the needs of a client to determine whether it is advisable to refer the client to other specialists, informing the client of that judgment, and communicating that determination as requested or deemed appropriate to referral sources.

(*l*) "Research" means a systematic effort to collect, analyze, and interpret quantitative and qualitative data that describes how social characteristics, behavior, emotion, cognitions, disabilities, mental

disorders, and interpersonal transactions among individuals and organizations interact.

(m) "Supervision" includes the following:

(1) Ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised.

(2) Reviewing client or patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the counselor trainee.

(3) Monitoring and evaluating the ability of the intern or counselor trainee to provide services to the particular clientele at the site or sites where he or she will be practicing.

(4) Ensuring compliance with laws and regulations governing the practice of licensed professional clinical counseling.

(5) That amount of direct observation, or review of audio or videotapes of counseling or therapy, as deemed appropriate by the supervisor.

4999.14. The board shall do all of the following:

(a) Communicate information about its activities, the requirements and qualifications for licensure, and the practice of professional clinical counseling to the relevant educational institutions, supervisors, professional associations, applicants, counselor trainees, interns, and the public.

(b) Develop policies and procedures to assist educational institutions in meeting the educational qualifications of Sections 4999.32 and 4999.33.

Article 2. Scope of Practice

4999.20. (a) Professional clinical counseling means the application of counseling interventions and psychotherapeutic techniques to identify and remediate behavioral, cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. Professional clinical counseling includes conducting assessments for the purpose of establishing treatment goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, and make well-informed, rational decisions.

(b) "Counseling interventions and psychotherapeutic techniques" means the application of cognitive, affective, behavioral, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness, and pathology that reflect a pluralistic society. These interventions and techniques are specifically implemented in the context of a professional clinical counseling relationship and use a variety of counseling theories and approaches.

(c) "Assessment" means selecting, administering, scoring, and interpreting tests, instruments, and other tools and methods designed to measure an individual's attitudes, abilities, aptitudes, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral concerns and development and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or ameliorating changing life situations, as part of the counseling process. "Assessment" shall not include the use of projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior.

(d) Professional clinical counselors shall refer clients to other licensed health care professionals when they identify issues beyond their own scope of education, training, and experience.

4999.22. (a) Nothing in this chapter shall prevent qualified persons from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, these qualified persons shall not hold themselves out to the public by any title or description of services incorporating the words "licensed professional clinical counselor" and shall not state that they are licensed to practice professional clinical counseling, unless they are otherwise licensed to provide professional clinical counseling services.

(b) Nothing in this chapter shall be construed to constrict, limit, or withdraw provisions of the Medical Practice Act, the Clinical Social Worker Practice Act, the Nursing Practice Act, the Psychology Licensing Law, or the Marriage and Family Therapy licensing laws.

(c) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination who performs counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in this state, or who is licensed to practice medicine, who provides counseling services as part of his or her professional practice.

(d) This chapter shall not apply to an employee of a governmental entity or of a school, college, or university, or of an institution both nonprofit and charitable, if his or her practice is performed solely under the supervision of the entity, school, or organization by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed.

(e) All persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

4999.24. Nothing in this chapter shall restrict or prevent activities of a psychotherapeutic or counseling nature on the part of persons employed by accredited or state-approved academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or counselor trainees pursuing a course of study leading to a degree that qualifies for professional clinical counselor licensure at an accredited or state-approved college or university, or working in a recognized training program, provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by a title such as “counselor trainee” or other title clearly indicating the training status appropriate to the level of training.

Article 3. Licensure

4999.30. Except as otherwise provided in this chapter, a person shall not practice or advertise the performance of professional clinical counseling services without a license issued by the board, and shall pay the license fee required by this chapter.

4999.32. (a) This section shall apply to applicants for licensure or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those

applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4999.33.

(b) To qualify for a license or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (d), the coursework in the core content areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 48 graduate semester or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in each of following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and

literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistic concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders on medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) A minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy the requirements by successfully completing postmaster's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

(e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:

(1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A two semester unit or three quarter unit survey course in psychopharmacology.

(4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.

(5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.

(6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors. When coursework in a master's or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging.

(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

4999.33. (a) This section shall apply to the following:

(1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a master's or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this

section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is "counseling or psychotherapy in content" if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(1) The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:

(A) Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and

criterion-referenced assessment, statistic concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors' roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors' roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders on medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession's scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner's sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(2) Fifteen semester units or 22.5 quarter units of advanced coursework and experience to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition

to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(4) An understanding of the effects of socioeconomic status on treatment and available resources.

(5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.

(6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.

(8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(9) Child abuse assessment and reporting.

(10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging.

(e) A degree program that qualifies for licensure under this section shall do all of the following:

(1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.

(2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.

(3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy the requirements by successfully completing postmaster's or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

4999.34. A counselor trainee may be credited with predegree supervised practicum and field study experience completed in a setting that meets all of the following requirements:

(a) Lawfully and regularly provides mental health counseling and psychotherapy.

(b) Provides oversight to ensure that the counselor trainee's work at the setting meets the practicum and field study experience and requirements set forth in this chapter and is within the scope of practice for licensed professional clinical counselors.

(c) Is not a private practice.

(d) Experience may be gained by the counselor trainee solely as part of the position for which the counselor trainee volunteers or is employed.

4999.36. (a) A counselor trainee may perform activities and services provided that the activities and services constitute part of the counselor trainee's supervised course of study and that the person is designated by the title "counselor trainee."

(b) All practicum and field study hours gained as a counselor trainee shall be coordinated between the school and the site where hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision

shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site.

(c) If an applicant has gained practicum and field study hours while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those practicum and field study hours were gained in compliance with this section.

(d) A counselor trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under supervision.

(e) No hours earned while a counselor trainee may count toward the 3,000 hours of postdegree internship hours.

(f) A counselor trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. For purposes of this subdivision, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

4999.40. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Section 4999.32 or 4999.33 and shall certify to the board that it has so notified its students.

(b) An applicant trained at an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from an institution of higher education that is accredited or approved. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services and shall provide any other documentation the board deems necessary.

4999.42. (a) To qualify for registration as an intern, an applicant shall have all of the following qualifications:

(1) The applicant shall have earned a master's or doctoral degree as specified in Section 4999.32 or 4999.33, as applicable. An applicant whose education qualifies him or her under Section

4999.32 shall also have completed the coursework or training specified in subdivision (e) of Section 4999.32.

(2) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(3) The board shall not issue a registration to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(b) The board shall begin accepting applications for intern registration on January 1, 2011.

4999.44. An intern may be credited with supervised experience completed in any setting that meets all of the following requirements:

(a) Lawfully and regularly provides mental health counseling or psychotherapy.

(b) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as specified in Article 2 (commencing with Section 4999.20).

(c) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(d) An intern shall not be employed or volunteer in a private practice until registered as an intern.

4999.45. An intern employed under this chapter shall:

(a) Not perform any duties, except for those services provided as a counselor trainee, until registered as an intern.

(b) Not be employed or volunteer in a private practice until registered as an intern.

(c) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(d) File for renewal annually for a maximum of five years after initial registration with the board.

(e) Cease continued employment as an intern after six years unless the requirements of subdivision (f) are met.

(f) When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant issued a subsequent intern registration pursuant to this subdivision may

be employed or volunteer in any allowable work setting except private practice.

4999.46. (a) Each applicant for licensure shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include the following:

(1) A minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

(A) Not more than 40 hours in any seven consecutive days.

(B) Not less than 1,750 hours of direct counseling with individuals or groups in a clinical mental health counseling setting using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(C) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(D) Not more than 1,000 hours of direct supervisor contact and professional enrichment activities.

(E) Not more than 500 hours of experience providing group therapy or group counseling.

(F) Not more than 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(G) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(H) No hours of clinical mental health experience may be gained more than six years prior to the date the application for licensure was filed.

(c) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(d) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being

supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling. At no time shall a supervisor supervise more than two interns.

(e) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) An intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain up to 30 hours of the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

4999.47. (a) Counselor trainees, interns, and applicants shall perform services as an employee or as a volunteer, not as an independent contractor.

The requirements of this chapter regarding gaining hours of clinical mental health experience and supervision are applicable equally to employees and volunteers.

(b) Counselor trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(c) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(d) Counselor trainees, interns, and applicants who provide voluntary services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those counselor trainees, interns, and applicants for services rendered in

any lawful work setting other than a private practice shall be considered an employee and not an independent contractor.

(e) The board may audit an intern or applicant who receives reimbursement for expenses and the intern or applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(f) Counselor trainees, interns, and applicants shall only perform services at the place where their employer regularly conducts business and services, which may include other locations, as long as the services are performed under the direction and control of the employer and supervisor in compliance with the laws and regulations pertaining to supervision. Counselor trainees, interns, and applicants shall have no proprietary interest in the employer's business.

(g) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and counselor trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

4999.48. The board shall adopt regulations regarding the supervision of interns which may include, but not be limited to, the following:

(a) Supervisor qualifications.

(b) Continuing education requirements of supervisors.

(c) Registration or licensing of supervisors, or both.

(d) General responsibilities of supervisors.

(e) The board's authority in cases of noncompliance or gross or repeated negligence by supervisors.

4999.50. (a) The board may issue a professional clinical counselor license to any person who meets all of the following requirements:

(1) He or she has received a master's or doctoral degree described in Section 4999.32 or 4999.33, as applicable.

(2) He or she has completed 3,000 hours of supervised experience in the practice of professional clinical counseling as provided in Section 4999.46.

(3) He or she provides evidence of a passing score, as determined by the board, on examinations approved by the board.

(b) An applicant who has satisfied the requirements of this chapter shall be issued a license as a professional clinical counselor in the form that the board may deem appropriate.

(c) The board shall begin accepting applications for licensure on January 1, 2012.

4999.51. Every applicant for a license as a professional clinical counselor shall meet the board's regulatory requirements for professional clinical counselor licensure, including the following:

(a) The applicant has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) The board shall not issue a license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(c) The applicant has successfully passed a state and federal level criminal offender record information search conducted through the Department of Justice, as follows:

(1) The board shall direct applicants to electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state and federal level convictions and arrests and information as to the existence and content of a record of state or federal level arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) The Department of Justice shall forward the fingerprint images and related information received pursuant to paragraph (1) to the Federal Bureau of Investigation and request a federal summary for criminal history information.

(3) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to paragraph (1).

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

4999.52. (a) Except as provided in Sections 4999.54 and 4999.56, every applicant for a license as a professional clinical counselor shall be examined by the board. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine.

(c) (1) It is the intent of the Legislature that national licensing examinations, such as the National Counselor Examination for Licensure and Certification (NCE) and the National Clinical Mental Health Counselor Examination (NCMHCE), be evaluated by the board as requirements for licensure as a professional clinical counselor.

(2) The board shall evaluate various national examinations in order to determine whether they meet the prevailing standards for the validation and use of licensing and certification tests in California.

(3) The Department of Consumer Affairs' Office of Examination Resources shall review the occupational analysis that was used for developing the national examinations in order to determine if it adequately describes the licensing group and adequately determines the tasks, knowledge, skills, and abilities the licensed professional clinical counselor would need to perform the functions under this chapter.

(4) Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(5) If national examinations do not meet the standards specified in paragraph (2), then the board may develop and require a supplemental examination in addition to national examinations. Under these circumstances, national examinations, as well as a supplemental examination developed by the board, are required

for licensure as a professional clinical counselor pursuant to paragraph (3) of subdivision (a) of Section 4999.50 and this section.

(6) The licensing examinations shall also incorporate a California jurisprudence and ethics examination element that is acceptable to the board, or, as an alternative, the board may develop a separate California jurisprudence and ethics examination.

(d) The board shall not deny any applicant who has submitted a complete application for examination admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(e) The board shall not deny any applicant whose application for licensure is complete, admission to the examinations, nor shall the board postpone or delay any applicant's examinations or delay informing the candidate of the results of the examinations, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(f) If an applicant for examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the examinations, but may notify the applicant that licensure will not be granted pending completion of the investigation.

(g) Notwithstanding Section 135, the board may deny any applicant who has previously failed an examination permission to retake that examination pending completion of the investigation of any complaints against the applicant.

(h) Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(i) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

4999.54. Notwithstanding Section 4999.50, the board may issue a license to any person who submits an application for a

license between January 1, 2011, and June 30, 2011, provided that all documentation is submitted within 12 months of the board's evaluation of the application, and provided he or she meets one of the following sets of criteria:

(a) He or she meets all of the following requirements:

(1) Has a master's or doctoral degree from a school, college, or university as specified in Section 4999.32, that is counseling or psychotherapy in content. If the person's degree does not include all the graduate coursework in all nine core content areas as required by paragraph (1) of subdivision (c) of Section 4999.32, a person shall provide documentation that he or she has completed the required coursework prior to licensure pursuant to this chapter. A qualifying degree must include the supervised practicum or field study experience as required in paragraph (3) of subdivision (c) of Section 4999.32.

(A) A counselor educator whose degree contains at least seven of the nine required core content areas shall be given credit for coursework not contained in the degree if the counselor educator provides documentation that he or she has taught the equivalent of the required core content areas in a graduate program in counseling or a related area.

(B) Degrees issued prior to 1996 shall include a minimum of 30 semester units or 45 quarter units and at least six of the nine required core content areas specified in paragraph (1) of subdivision (c) of Section 4999.32. The total number of units shall be no less than 48 semester units or 72 quarter units.

(C) Degrees issued in 1996 and after shall include a minimum of 48 semester units or 72 quarter units and at least seven of the nine core areas specified in paragraph (1) of subdivision (c) of Section 4999.32.

(2) Has completed all of the coursework or training specified in subdivision (e) of Section 4999.32.

(3) Has at least two years, full-time or the equivalent, postdegree counseling experience, that includes at least 1,700 hours of experience in a clinical setting supervised by a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed physician and surgeon specializing in psychiatry, or a master's level counselor or therapist who is certified by a national certifying or registering organization, including, but not limited to, the National Board for Certified

Counselors or the Commission on Rehabilitation Counselor Certification.

(4) Has a passing score on the following examinations:

(A) The National Counselor Examination for Licensure and Certification or the Certified Rehabilitation Counselor Examination.

(B) The National Clinical Mental Health Counselor Examination.

(C) A California jurisprudence and ethics examination, when developed by the board.

(b) Is currently licensed as a marriage and family therapist in the State of California, meets the coursework requirements described in paragraph (1) of subdivision (a), and meets at least one of the following requirements:

(1) Has a passing score on the examinations described in paragraph (4) of subdivision (a).

(2) Has passed the standard written examination described in subdivision (c) of Section 4980.50 and either the oral examination or the clinical vignette written examination described in subdivision (g) of Section 4980.40.

(3) Has passed any other equivalent examinations acceptable to the board.

(c) Is currently licensed as a clinical social worker in the State of California, meets the coursework requirements described in paragraph (1) of subdivision (a), and meets at least one of the following requirements:

(1) Has a passing score on the examinations described in paragraph (4) of subdivision (a).

(2) Has passed the standard written examination and the clinical vignette written examination required pursuant to Article 4 (commencing with Section 4996).

(3) Has passed any other equivalent examinations acceptable to the board.

4999.56. (a) A license issued under subdivision (a) of Section 4999.54 shall be valid for six years from the issuance date of the initial license provided that the license is annually renewed during that period pursuant to Section 4999.101. After this six-year period, it shall be canceled unless the licensee does both of the following within the next renewal period:

(1) Obtains a licensure renewal as provided in Section 4999.101.

(2) Passes the examinations required for licensure on or after January 1, 2012, as set forth in Section 4999.52, or documents that he or she has already passed those examinations.

(b) Upon failure to meet the requirements set forth in this section, a license issued pursuant to subdivision (a) of Section 4999.54 shall be canceled and the person shall be required to meet the requirements listed in Section 4999.50 to obtain a new license.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

4999.58. (a) This section applies to persons who apply for licensure between January 1, 2012, and December 31, 2013, inclusive.

(b) The board may issue a license to a person who, at the time of application, has held for at least two years, a valid license as a professional clinical counselor, or an equivalent title, in another jurisdiction of the United States, if the education and supervised experience requirements are substantially the equivalent of this chapter, the person complies with subdivision (b) of Section 4999.40, if applicable, the person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50, and the person pays the required fees.

(c) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised clinical experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.

(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the applicant has completed the training or coursework required under subdivision (e) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not

limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

(e) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant's education meets the requirements of Section 4999.32. If the applicant's degree does not contain the content or the overall units required by Section 4999.32, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(1) The applicant's degree contains the required number of practicum units under paragraph (3) of subdivision (c) of Section 4999.32.

(2) The applicant remediates his or her specific deficiency by completing the course content and units required by Section 4999.32.

(3) The applicant's degree otherwise complies with this section.

(f) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

4999.60. (a) This section applies to persons who are licensed outside of California and apply for licensure on or after January 1, 2014.

(b) The board may issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license as a professional clinical counselor, or an equivalent title, in another jurisdiction of the United States if all of the following conditions are satisfied:

(1) The applicant's education is substantially equivalent, as defined in Section 4999.62.

(2) The applicant complies with subdivision (b) of Section 4999.40, if applicable.

(3) The applicant's supervised experience is substantially equivalent to that required for a license under this chapter. The

board shall consider hours of experience obtained outside of California during the six-year period immediately preceding the date the applicant initially obtained the license described above.

(4) The applicant passes the examinations required to obtain a license under this chapter.

4999.61. (a) This section applies to persons who apply for licensure or registration on or after January 1, 2014, and who do not hold a license as described in Section 4999.60.

(b) The board shall accept education gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education is substantially equivalent, as defined in Section 4999.62, and the applicant complies with subdivision (b) of Section 4999.40, if applicable.

(c) The board shall accept experience gained outside of California for purposes of satisfying licensure or registration requirements if the experience is substantially equivalent to that required by this chapter.

4999.62. (a) This section applies to persons who apply for licensure or registration on or after January 1, 2014.

(b) For purposes of Sections 4999.60 and 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, 48 semester or 72 quarter units, including, but not limited to, both of the following:

(A) Six semester or nine quarter units of practicum, including, but not limited to, a minimum of 280 hours of face-to-face counseling.

(B) The required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) of Section 4999.33.

(2) The applicant completes any units and course content requirements under Section 4999.33 not already completed in his or her education.

(3) The applicant completes credit level coursework from a degree-granting institution that provides all of the following:

(A) Instruction regarding the principles of mental health recovery-oriented care and methods of service delivery in recovery model practice environments.

(B) An understanding of various California cultures and the social and psychological implications of socioeconomic position.

(C) Structured meeting with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(D) Instruction in behavioral addiction and co-occurring substance abuse and mental health disorders, as specified in subparagraph (K) of paragraph (1) of subdivision (c) of Section 4999.33.

(4) The applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.33, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous clients, psychotherapist-client privilege, recordkeeping, client access to records, the Health Insurance Portability and Accountability Act, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to clients.

Article 4. Practice Requirements

4999.70. A licensee shall display his or her license in a conspicuous place in his or her primary place of practice.

4999.72. Any licensed professional clinical counselor who conducts a private practice under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, the name and license designation of the owner or owners of the practice.

4999.74. Licensed professional clinical counselors shall provide to each client accurate information about the counseling relationship and the counseling process.

4999.76. (a) (1) Except as provided in paragraph (2) and subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form

prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding two years, as determined by the board.

(2) Except as provided in subdivision (c), the board shall not renew a license issued pursuant to subdivision (a) of Section 4999.54 unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding year, as determined by the board. This paragraph shall become inoperative on January 1, 2018.

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional clinical counseling association, a licensed health facility, a governmental entity, a continuing education unit of a four-year institution of higher learning that is accredited or approved, or a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section

for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.

(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(g) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

(i) The continuing education requirements of this section shall fully comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

Article 5. Enforcement

4999.80. In order to carry out the provisions of this chapter, the board shall do all of the following:

(a) Enforce laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(b) Investigate complaints concerning the conduct of any licensed professional clinical counselor.

(c) Revoke, suspend, or fail to renew a license that it has authority to issue for just cause, as enumerated in rules and regulations of the board. The board may deny, suspend, or revoke any license granted under this chapter pursuant to Section 480, 481, 484, 496, 498, or 499.

4999.82. It shall be unlawful for any person to engage in any of the following acts:

(a) Engage in the practice of professional clinical counseling, as defined in Section 4999.20, without first having complied with the provisions of this chapter and without holding a valid license as required by this chapter.

(b) Represent himself or herself by the title "licensed professional clinical counselor," "LPCC," "licensed clinical counselor," or "professional clinical counselor" without being duly licensed according to the provisions of this chapter.

(c) Make any use of any title, words, letters, or abbreviations, that may reasonably be confused with a designation provided by this chapter to denote a standard of professional or occupational competence without being duly licensed.

(d) Materially refuse to furnish the board information or records required or requested pursuant to this chapter.

4999.84. It is the intent of the Legislature that any communication made by a person to a licensed professional clinical counselor in the course of professional services shall be deemed a privileged communication.

4999.86. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

4999.88. In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional

conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The

board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any counselor trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment

and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any intern or counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a counselor trainee or intern under one's supervision or control to perform, or permitting the counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the counselor trainee's or intern's level of education, training, or experience.

(u) The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

Article 6. Revenue

4999.100. (a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant shall, on or before the expiration date of the registration, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant’s last renewal.

4999.101. (a) A license issued under subdivision (a) of Section 4999.54 shall expire one year from the last day of the month during which it was issued.

(b) To renew an unexpired license described in subdivision (a), the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(c) The board shall begin accepting applications for licensure renewal on January 1, 2012.

(d) If a license issued under subdivision (a) of Section 4999.54 is not renewed on or before the expiration date of the license, the license shall be canceled and the person shall be required to meet the requirements set forth in Section 4999.50 in order to obtain a new license.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

4999.102. (a) Licenses issued under Section 4999.50, subdivision (b) or (c) of Section 4999.54, subdivision (b) of Section 4999.58, or Section 4999.60 and, on and after January 1, 2018, licenses issued under subdivision (a) of Section 4999.54 shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license described in subdivision (a), the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether

any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

4999.104. Licenses issued under Section 4999.50, subdivision (b) or (c) of Section 4999.54, subdivision (b) of Section 4999.58, or Section 4999.60 and, on and after January 1, 2018, licenses issued under subdivision (a) of Section 4999.54 that have expired may be renewed at any time within three years of expiration. To renew an expired license described in this section, the licensee shall do all of the following:

(a) File an application for renewal on a form prescribed by the board.

(b) Pay all fees that would have been paid if the license had not become delinquent.

(c) Pay all delinquency fees.

(d) Certify compliance with the continuing education requirements set forth in Section 4999.76.

(e) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

4999.106. A license that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued, except that a former licensee may apply for and obtain a new license if he or she complies with all of the following:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she takes and passes the current examinations required for licensing.

(c) He or she submits an application for initial licensure.

4999.108. A suspended license is subject to expiration and shall be renewed as provided in this article, but that renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

4999.110. A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee shall, as a condition precedent to its

reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

4999.112. (a) A licensed professional clinical counselor may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall do all of the following:

(1) Pay a biennial fee of one-half of the active renewal fee.

(2) Be exempt from continuing education requirements.

(3) Not engage in the practice of professional clinical counseling in this state.

(4) Otherwise be subject to this chapter.

(b) A licensee on inactive status may have his or her license reactivated by complying with all of the following:

(1) Submitting a request to the board.

(2) Certifying that he or she has not committed any acts or crimes constituting grounds for denial of licensure.

(3) Paying the remaining one-half of the renewal fee.

(4) Completing the following continuing education requirements:

(A) Eighteen hours of continuing education is required within the two years preceding the date of the request for reactivation if the license will expire less than one year from the date of the request for reactivation.

(B) Thirty-six hours of continuing education is required within the two years preceding the date of the request for reactivation if the license will expire more than one year from the date of the request for reactivation.

4999.114. The board shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and at the same time deposit the entire amount thereof in the State Treasury for credit to the Behavioral Sciences Fund.

4999.116. (a) The moneys credited to the Behavioral Sciences Fund under Section 4999.114 shall, upon appropriation by the Legislature, be used for the purposes of carrying out and enforcing the provisions of this chapter.

(b) The board shall keep records that will reasonably ensure that funds expended in the administration of each licensing or registration category bear a reasonable relation to the revenue

derived from each category, and shall so notify the department no later than May 31 of each year.

(c) Surpluses, if any, may be used in a way so as to bear a reasonable relation to the revenue derived from each category, and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.

4999.118. A licensee or registrant shall give written notice to the board of a name change within 30 days after each change, giving both the old and new names. A copy of the legal document authorizing the name change, such as a court order or marriage certificate, shall be submitted with the notice.

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for an initial license shall be up to one hundred eighty dollars ($180).

(b) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred dollars ($100).

(c) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(d) The fee for the issuance of an initial license shall be up to two hundred dollars ($200).

(e) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(f) The fee for annual renewal of an intern registration shall be up to one hundred dollars ($100).

(g) The fee for two-year renewal of licenses shall be up to two hundred dollars ($200).

4999.122. The professional clinical counselor licensing program shall be supported from fees assessed to applicants, interns, and licensees. Startup funds to implement this program shall be derived, as a loan, from the reserve fund of the Board of Behavioral Sciences, subject to an appropriation by the Legislature in the annual Budget Act. The board shall not implement this chapter until funds have been appropriated.

SEC. 5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, “mandated reporter” is defined as any of the following:

(1) A teacher.
(2) An instructional aide.
(3) A teacher's aide or teacher's assistant employed by any public or private school.
(4) A classified employee of any public school.
(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
(6) An administrator of a public or private day camp.
(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
(9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.
(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
(11) A Head Start program teacher.
(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
(13) A public assistance worker.
(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
(15) A social worker, probation officer, or parole officer.
(16) An employee of a school district police or security department.
(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.

(39) A licensed professional clinical counselor, as defined in Section 4999.12 of the Business and Professions Code.

(40) A counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(41) An unlicensed professional clinical counselor intern registered pursuant to Section 4999.42 of the Business and Professions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged

to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** March 24, 2009

From: Paul Riches, Executive Officer **Telephone:** (916) 574-7840

Subject: **Private Practice Definition Marriage and Family Therapists (MFT)**

Background

Current law prohibits both marriage and family therapist trainees (students gaining practicum experience) from working in "private practice" settings. Current law also prohibits marriage and family therapist interns (individuals gaining their post-graduate experience) from working in a "private practice" after their initial six (6) year registration period. However, there is no definition of what constitutes a "private practice" in either statute or regulation. Generally, the absence of a specific definition of "private practice" is not a problem. There is wide agreement and understanding that "private practice" means independent practitioners operating in private offices seeing clients who are either paying for their own therapy or billing third party insurance.

Interns and trainees are also prohibited from being employed as private contractors. They must be employed or work as volunteers.

In the past, the traditional definition of private practice has been thought of as independent practice, owned by a private practitioner. However, the board is receiving inquiries from supervisors, trainees and interns about how to define a practice site that is owned privately by therapists but does not fit the traditional mold of an independent private practice. Currently, board staff resort to a series of questions to determine the nature of the ownership of the practice site and its suitability as a training site or employment site. This approach is all that is available under current law but is unsatisfactory on several levels. Clarifying the definition of private practice is necessary in order for the board staff to meaningfully and accurately answer these questions.

Below are several examples of the inquiries the board has received recently:

1) "The agency I will be working at is "privately owned". The e-mail goes on to state that all over the state, agencies are "privately" owned, but they are agencies, and not private practice venues. Almost every agency trainees go to, other than schools, hospitals, or government agencies are owned by someone. Please clarify."

2) "We are a not a non-profit agency, but a privately held agency (not a private practice). We have contracts for services with the State of California, Hospitals, Head-start preschools, public

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§4980.42. TRAINEES' SERVICES

(a) Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may gain hours of experience outside the required practicum. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.

(b) On and after January 1, 1995, all hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

§4980.43. PROFESSIONAL EXPERIENCE; INTERNS OR TRAINEES

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of experience obtained prior to completing a master's or doctor's degree. This experience shall be composed as follows:

(A) Not more than 750 hours of counseling and direct supervisor contact.

(B) Not more than 250 hours of professional enrichment activities, excluding personal psychotherapy as described in paragraph (2) of subdivision (l).

(C) Not more than 100 hours of personal psychotherapy as described in paragraph (2) of subdivision (l). The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year

requirement.

(7) Not more than a total of 1,000 hours of experience for direct supervisor contact and professional enrichment activities.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of postdegree experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(12) Not more than 125 hours of experience providing personal psychotherapy services via telemedicine in accordance with Section 2290.5.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. **Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer.** The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. **Experience shall not be gained by interns or trainees as an independent contractor.**

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their

employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(l) For purposes of this chapter, "professional enrichment activities" includes the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in personal psychotherapy which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

§4980.45. EMPLOYMENT OR SUPERVISION OF INTERNS; MAXIMUM NUMBER OF INTERNS

(a) A licensed professional in private practice who has satisfied the requirements of subdivision (g) of Section 4980.03 may supervise or employ, at any one time, no more than two unlicensed marriage and family therapist registered interns in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than two registered interns for each employee or shareholder who has satisfied the requirements of subdivision (g) of Section 4980.03. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

schools, private schools and charter schools. We provide speech therapy, behavioral therapy, and work with individuals in schools and hospitals as well as their families."

3) "I was told by the practicum supervisor at my school that all practicum sites had to be at non-profit organizations to count with the BBS, is this true? I ask because I am currently employed by a drug treatment facility that is not a non-profit and I am trying to get this site approved as a practicum site. Please advise."

4) "My site is a for-profit private company that offers ABA behavioral therapy to children with autism as well as offering marriage and family therapy to families/parents of kids with autism. The law states that a trainee cannot work at a private practice owned by an MFT, and my company is not that. It is a private for-profit company owned by Jane Doe, M.A., B.C.B.A. She has her Board Certified Behavioral Analyst licensure. Is it okay to work as an MFT trainee at a for-profit private company?"

Staff is requesting that the committee begin a discussion to address these issues and provide clarity to applicants, universities, supervisors and licensees regarding how to define private practice.

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Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** April 1, 2009

From: Paul Riches, Executive Officer **Telephone:** (916) 574-7840

Subject: Experience Requirements for Marriage and Family Therapist (MFT) Licensure

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Background:

The committee opened a discussion on this issue at the October 2008 committee meeting and directed staff to bring back some proposals to address both the inclusion of an incentive for obtaining experience providing therapy to family units and to simplify the existing experience requirements.

Attached to this memo is a discussion draft of changes to MFT experience requirements. This draft is intended to stimulate discussion and address issues raised previously regarding MFT experience requirements. The draft includes the following changes:

1. Double counting the first 150 hours providing family therapy.

Current law requires that candidates complete 500 hours of experience treating couples, families and children. This allows candidates to gain the hours treating children exclusively and not gain experience providing therapy with more than one family member in the room at one time. Most candidates fulfill the current requirement by treating children. The incentive provided is similar to that for obtaining personal psychotherapy under current law.

2. Combine existing limits on telephone crisis counseling and telemedicine into a single category with a maximum of 375 hours allowed.

Current law treats experience providing "telephone crisis counseling" and "telemedicine" separately despite the activities appearing to overlap one another. Telephone crisis counseling is currently limited to 250 hours and telemedicine is currently limited to 125 hours. The discussion draft combines them into a single category with a limit of 375 hours based on discussion at the January committee meeting.

3. Allow Marriage and Family Therapist Interns (IMF) to collect hours for "client centered advocacy."

This is a proposal already approved by the board. This draft would limit hours for client centered advocacy, personal psychotherapy and direct supervisor contact to a combined total of 1250.

4. Change the supervision ratio for post-graduate experience to parallel that required of associate clinical social workers.

Existing law requires IMFs to receive one unit of supervision (one hour of individual or two hours of group supervision) for each 10 hours of psychotherapy/counseling work experience. A typical MFT candidate must receive over 400 hours of supervision to be eligible for licensing examinations. However, a typical LCSW candidate receives around 150 hours of supervision. This disparity makes little sense given the overlapping scopes of practice and the limited availability of supervision. The attached draft changes to the post-graduate supervision requirements to parallel those required of social work candidates. Under that system, an IMF would need one unit of supervision for the first 10 hours of psychotherapy/counseling work experience in any week and one additional unit of supervision for any additional hours of psychotherapy/counseling work experience in that same week. This would ONLY apply to psychotherapy/counseling work experience.

Supervision requirements for MFT Trainees would not be affected.

5. Allow hours of experience to be gained in any category as a Trainee.

Current law restricts the types of experience that can be gained as a Trainee to certain categories. The attached draft would allow a trainee to gain experience in any category. Specifically this would allow Trainees to gain experience for clinical documentation and psychological testing.

Attached to this memo is a discussion draft of changes and experience calculators that reflect typical application scenarios for both MFT and LCSW candidates and a summary of experience requirements in other states developed by the Association of Marriage and Family Therapy Regulatory Boards.

Discussion Draft

§4980.43. PROFESSIONAL EXPERIENCE; INTERNS OR TRAINEES

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctor's degree. The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to graduation. ~~This experience shall be composed as follows:~~

~~(A) Not more than 750 hours of counseling and direct supervisor contact.~~

~~(B) Not more than 250 hours of professional enrichment activities, excluding personal psychotherapy as described in paragraph (2) of subdivision (l).~~

~~(C) Not more than 100 hours of personal psychotherapy as described in paragraph (2) of subdivision (l). The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.~~

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(7) Not more than a total of 1250 hours of experience for:

(A) Direct supervisor contact.
(B). Professional Enrichment Activities
(C) Client centered advocacy.

~~Not more than a total of 1,000 hours of experience for direct supervisor contact and professional enrichment activities.~~

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of ~~postdegree~~ experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy. ~~Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.~~

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(A) For the first 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited for two hours of experience for each hour of therapy provided.

(12) Not more than ~~125~~ 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

~~Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.~~

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervises and in segments lasting no less than one continuous hour.

(6) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. ~~The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.~~

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(l) For purposes of this chapter, "professional enrichment activities" includes the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in personal psychotherapy which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

MFT Experience Calculator

(Revised June 2008)

	Trainee/Practicum	Intern/Post-Degree	Category Sub-Total
Counseling Hours			
Individual Counseling *(no min/max)*	285.0	560.0	**845.0**
Couples, Family, and/or Children *(min 500)*	155.0	380.0	**535.0**
Group Counseling *(max 500)*	0.0	500.0	**500.0**
Telephone Counseling *(max 250)*	0.0	0.0	**0.0**
Telemedicine Counseling *(max 125)*	0.0	0.0	**0.0**
Sub-Total	**440.0**	**1440.0**	**1880.0**
Non-Counseling Hours			
Administrating and Evaluating Psychological Test, Writing progress notes and process notes *(max 250)*	N/A	250.0	**250.0**
Workshops, Seminars, Training Sessions, and/or Conferences *(max 250)*	100.0	150.0	**250.0**
Sub-Total	**100.0**	**400.0**	**500.0**
Supervision			
Individual Supervision Hours	50	2	**52.0**
Group Supervision Hours	85	285	**370.0**
Sub-Total	**135**	**287**	**422.0**
Total Weeks of Supervision	55	155	**210.0**
Counseling Experience Ratio Compliance			
Total Units of Supervision	**92.5**	**144.5**	**237.0**
Max # of Counseling Hours Based on Sup.	**462.5**	**1445.0**	**1907.5**
Actual Amount of Credited Counseling Hrs	**440.0**	**1440.0**	**1880.0**

Approximate Weeks of Supervision Needed	**0**
Approximate Hours of Experience Needed	**0**

Personal Psychotherapy Hours	
Actual Personal Psychotherapy Hrs	100.0
Credited Hrs of Experience (max 300)	**300**

Professional Development Time (max 1000)	
(Prof Development = Supervision+Personal Psychotherapy+Workshops)	**972.0**

yellow background = a limit was reached

green text = good to go

red text = not sufficient

orange background = YOU HAVE GONE OVER YOUR MAXIMUM IN THIS CATEGORY, PLEASE ADJUST YOUR TOTALS TO COMPLY WITH THE LIMIT

Trainee/Practicum Counseling and Supervision (max 750)	
(Counseling Experience and Supervision earned while in degree program)	575.0

DISCLAIMER: THIS CALCULATOR IS PROVIDED SOLELY AS A RESOURCE TO ASSIST APPLICANTS IN APPROXIMATING COMPLETION OF THEIR SUPERVISED EXPERIENCE REQUIREMENTS. THIS CALCULATOR DOES NOT CERTIFY COMPLETION OF REQUIREMENTS. ONLY BOARD STAFF EVALUATES MFT APPLICATIONS TO DETERMINE APPLICANT COMPLIANCE WITH LICENSING REQUIREMENTS. THIS CALCULATOR DOES NOT GUARANTEE APPLICATION APPROVAL.

LCSW Experience Calculator

(Revised June 2008)

Experience	
A. Clinical Psychosocial Diagnonsis, Assessment and Treatment, INCLUDING Individual or Group Psychotherapy (min. 2000 hrs):	2100.0
B. Client-centered advocacy, consultation, evaluation, and research (max. 1200):	1185.0
Total (A+B=C)	3285.0

Total Weeks of Supervision:	125
Total Hours of Individual Supervision:	58
Total Hours of Group Supervision:	80

Approximate Hours of Experience Needed:	0
Approximate Weeks of Supervision Needed:	0
Approximate Amount of Individual or Group Psychotherapy Needed:	0

Individual or Group Psychotherapy	
A1. Individual or Group Psychotherapy* (min. 750 hrs):	765.0

yellow background = a limit was reached
green text = good to go
red text = not sufficient

*If the ASW accumulates more than 10 hours of direct psychotherapy in a given week, he or she will need to obtain an additional hour of individual supervision or two (2) hours of group supervision to cover the direct face-to-face psychotherapy time over 10 hours for the week.

For example, Applicant B accumulates 16 hours of direct psychotherapy in a week. Usually, this applicant receives only one (1) hour of individual supervision, but for this week, the applicant needs to gain an additional hour of individual supervision or two (2) hours of group supervision to cover the extra 6 hours of direct psychotherapy time.

State Licensure Comparison Chart
October 2007

The Association for Marital and Family Therapy Regulatory Boards (AMFTRB) is presenting a chart comparing the licensing requirements by states on the dimensions of education, direct client contact hours, direct hours that must be MFT, indirect/other hours, supervision, post graduation years of experience, exam, other requirements, specified master's degree credit hours, and practicum.

This chart should be used with **CAUTION.**

States are constantly reviewing and revising their regulations and rules regarding licensing.

The chart is a compilation of the best information that was contributed and available at the time, October 2007.

If you are interested in becoming licensed in a particular state, be certain to research the most current information for that state's requirements from the state's web site or by contacting the state's licensing board directly.

State Licensure Comparison Chart

(Compiled March 2007 – check individual state web sites for details and for any changes to licensure laws)

State	**Education** (regionally accredited institution unless otherwise indicated)	**Direct Client Contact Hours**	**Direct Hours that must be MFT**	**Indirect Or Other Hours** (if specified)	**Supervision**	**Post Graduate Years of Experience**	**Exam**	**Other Requirements**	**Specified Master's degree Credit Hours** (specific MFT coursework requirements available on state web pages)	**Practicum**
Alabama	COAMFTE Master's degree or equivalent	1000	250		200 (1 to 5 ratio) at least 100 hours must be individual	2 years experience post master's degree	MFT National Exam	Good Moral Character		500 hours
Alaska	Graduate degree in MFT or allied field	1500	1500		200 (100 individual and 100 group)	4 years	Oral or written exam administered by the board	Training in domestic violence		One year
Arizona	COAMFTE Master's degree or equivalent	1600	1000		200 hours	2 years	MFT National Exam			300 hours
Arkansas	COAMFTE Master's or equivalent	3 years with 1000 hours of client contact per years			Year 1=1000 hour with 100 supervision hours; Year 2=1000/50; Year 3 = 1000/25	3 years 30 post master's credit hours may be substituted for one year.	MFT National Exam	Oral exam after passing written exam. Approval of therapy tape. Criminal background check	60 hour Master's degree	500 hours
California	Master's degree in MFT or equivalent	1700	500	1300	1 to 10 ratio for the duration of supervised post master's experience (1 to 5 during graduate program)	2-6 years	California Exam	Additional Training-check website for specifics	48 hour Master's degree	500 hours
Colorado	COAMFTE Master's degree or equivalent	1500		500 (0 if a Ph.D)	100, 50 must be individual, 75/37.5 if a Ph.D.	2 years for Masters degree, 1 year Ph.D.-	MFT National Exam	Jurisprudence exam	45 hour Master's degree	300 hours
Connecticut		1000			100 hours 50 must be individual	1 year	MFT National Exam		45 hour Master's degree	500 hours completed in 1-2 years
Delaware	COAMFTE Master's or equivalent	1600	500		100 hours 60 must be individual	4 years	MFT National Exam			Not specified
District of	COAMFTE	1500	1500		300 (1 to 5 ratio) at	2 years	MFT National Exam	Good Moral	60 hour Master's	Not

Columbia	Master's degree or equivalent				least 100 must be individual			Character	degree	Specified
Florida	MFT Master's degree					2 years supervised experience	MFT National Exam	8 hour law & rules course, 2 hour prevention of medical errors course		Not Specified
Georgia	COAMFTE Master's or equivalent	2000	2000		200, 100 with an approved supervisor, 50 must be individual	2-5 years	MFT National Exam	Criminal Background check		1 year, 500 hours
Hawaii	MFT Master's degree	1000	1000		200 hours	2 years	MFT National Exam			1 year 300 hours
Idaho	COAMFTE CACREP Master's or equivalent	2000	1000		200 hours 100 hours must be individual	2 years	MFT National Exam		60 hour Master's degree	1 year 300 hours 150 MFT hours
Illinois	COAMFTE Master's degree or equivalent	1000	1000		200 (1 to 5 ratio) at least 100 must be individual	2 years	MFT National Exam	Good Moral Character	48 hour Master's degee	300 hours
Indiana	COAMFTE Master's degree or equivalent	1000	500		200 (1 to 5 ratio) at least 100 must be individual	3 years	MFT National Exam	Good Moral Character		500 hours
Iowa	COAMFTE Master's or equivalent	1000	1000		200 hours 100 must be individual, 1 hour per week must be face to face individual	2 years	MFT National Exam		45 hour Master's degree	300 hours
Kansas	COAMFTE Master's degree or equivalent	4000			1 to 15 ratio		MFT National Exam			500 hours
Kentucky	COAMFTE Master's degree or equivalent	1000	1000		200 hours	2 years	MFT National Exam	N/A		300 hours
Louisiana	COAMFTE Master's or equivalent, CACREP Master's with MFT coursework	3000, 2000 must be direct client contact		1000	200 hours 100 must be individual face to face (100 if graduate of COAMFTE program)	2 years	MFT National Exam	Good Moral Character	48 hour Master's degree	500, 250 must be with couples and families
Maine	COAMFTE or CACREP	3000	1000		200 hours, 100 must be individual	2 years	MFT National Exam		60 hour Master's degree	900, 360 must be

	Master's degree or equivalent				face to face					direct client contact
Maryland	MFT Master's or equivalent from an accredited university	1000			100 at least 50 must be face to face individual	2 years	MFT National Exam	N/A	60 hour Master's degree	300 hours
Massachusetts	COAMFTE Master's degree or equivalent	1000	500		200 at least 100 must be face to face individual	2 years	MFT National Exam	N/A	60 hour Master's degree	300 hours
Michigan	COAMFTE Master's degree or equivalent	1000	1000		200 (1 to 5 ratio) at least 100 hours individual	Not Specified	MFT National Exam	Good Moral Character		300 hours
Minnesota	COAMFTE Master's degree or equivalent	1000	500		200 at least 100 must be individual face to face	2 years	MFT National Exam	Good Moral Character		300 hours
Mississippi	COAMFTE Master's degree	1000			200 at least 100 must be individual face to face	2 years	MFT National exam	N/A		500 hours
Missouri	COAMFTE Master's degree or equivalent	1500	1500		200 face to face supervision hours	2 years (no more than 4 years)	MFT National Exam	N/A	45 hour Master's degree	500 hours
Montana	No license									
Nebraska (Licensed Mental Health provider)	COAMFTE Masters' degree or equivalent	1500		1500	2 face to face hours per 15 hours of direct client contact	2-5 years	MFT National Exam	N/A		300
Nevada	MFT Master's degree or equivalent	1500		1500 (check web site for specific requirements)	300 hours, 160 must be provided by an Approved supervisor other can be by secondary supervisor	Not specified	MFT National Exam	N/A	45 hour Master's degree	Not specified
New Hampshire	COAMFTE Master's degree or equivalent	1000	1000		200 hours face to face supervision	2 years	MFT National Exam	N/A		Not specified
New Jersey	COAMFTE Master's degree or equivalent	Full time practice for 5 years, at least 20 hours of client contact per week		11 hours per week for 5 years	5 years 2 of which must be in supervised MFT practice. 4 hours of supervision per week, 2 must be face to face (1 to 5	5 years	MFT National Exam	Good Moral Character		3 credit hour practicum

					ratio).					
New Mexico	MFT Master's degree from a regionally accredited university		1000		200 (100 must be individual face to face)	2 years	MFT National Exam		45 hour Master's degree	300
New York	Accredited MFT Master's degree or equivalent	1500			1 hour per week	Not Specified	Board Approved Exam	Good Moral Character, complete training in child abuse reporting	45 hour Master's degree	300 hours
North Carolina	MFT Master's degree or equivalent	1500 hours	1500		200 hours	3 years	MFT National Exam	Good Moral Character	45 hour Master's degree	500 hours
North Dakota	No Information									
Ohio	MFT master's degree or related masters with required coursework	1000	1000		200 (1 to 5 ratio) at least 100 hours individual	2 years	MFT National Exam	Good Moral Character	60 hour Master's degree	300 hours
Oklahoma	MFT Master's degree or equivalent	1000			150 face to face (75 may be group). Supervisor must observe live or on tape 2 times every 6 months	2 years	MFT National Exam; oral or written exam on psychopathology and law and regulations	Criminal background check		300 hours
Oregon	COAMFTE Master's degree or equivalent	2000	1000		At least 2 hours per month for every 45 client contact hours. 3 hours per month when 46 or more client contact hours.	3 years	National MFT exam	Law and rules examination	48 hour Master's degree	Not Specified
Pennsylvania	COAMFTE Master's degree or equivalent	1800		1800	2 hours for every 40 of the 3600	3 years	MFT National Exam	Good Moral Character	48 hour master's degree or 60 hours of graduate credit in a planned program	300 hours
Rhode Island	COAMFTE Master's degree or equivalent	2000			100 hours of supervision spread across 2 years	2 years	Board approved exam	Good Moral Character	60 hour Master's degree	12 semester hours of practicum and internship
South Carolina	MFT Master's degree or equivalent	1500			150 hours, 100 must be individual face to face	5 years of practice, 2 of the 5 years must be under the supervision of	Board approved exam		48 hour Master's degree	300 hours

						an MFT supervisor				
South Dakota	COAMFTE or CACREP Master's degree or equivalent	1700			200	3 years	MFT National Exam		48 hour Master's degree	1 year
Tennessee	MFT Master's degree or equivalent	1000			200	2 years	MFT National Exam, oral exam	Criminal Background check, good moral character		300 hours
Texas	MFT Master's degree or equivalent	1500	750		200, 100 must be face to face individual	2 years	MFT National Exam	Jurisprudence exam	45 hour Master's degree	12 months 9 credit hours
Utah	COAMFTE Master's degree or equivalent	4000 hours must include 1000 hours of mental health therapy	500		100 individual face to face hours	2 years	MFT National Exam			500 hours
Vermont	MFT Master's degree or equivalent	2 years experience under the supervision of a licensed MFT				2 years	MFT National Exam			
Virginia	CACREP or COAMFTE degree or equivalent	2000/w 4000 hours experience	1000		200 (1 to 5 ratio) at least 100 individual	2 years	Board Approved Exam	Good Moral Character	60 hour Master's degree	600 hours
Washington	COAMFTE Master's degree or equivalent	3000, 1000 must be direct contact with clients	500		200, 100 must be individual face to face	2 years	MFT National Exam	AIDS Education and Training		1 year 9 credit hours
West Virginia	No License									
Wisconsin	COAMFTE Master's degree of equivalent	1000 w/3000 hours experience			Not Specified	2 years	Board Approved Exam	N/A		Not Specified
Wyoming	MFT Master's degree or equivalent	3000			100 hours face to face supervision					

Board of Behavioral Sciences

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Memo

To: Policy and Advocacy Committee Members **Date:** April 1, 2009

From: Paul Riches, Executive Officer **Telephone:** (916) 574-7840

Subject: **Eligibility for Licensed Clinical Social Work (LCSW) Examinations**

Background

Current law (Business and Professions Code Section 4996.2, attached) requires that candidates for licensure as an LCSW must hold a masters degree in social work, complete 3200 hours of supervised experience, and pass the BBS administered examinations. It also provides that individuals licensed as clinical social workers in other states for more than two years may take the examinations and be eligible for licensure without documented supervised experience (Business and Professions Code Section 4996.17, attached). This change was made to recognize the practice experience gained in other states as a qualification for licensure.

Ordinarily, current law clearly addresses the many situations of applicants for licensure. However, the board has been contacted by an individual who presents a confounding situation. This individual first obtained a license as a marriage and family therapist and has practiced under that license for some time. Subsequently the individual completed a masters degree in social work and would like to be licensed as a clinical social worker as well. Current law requires that this individual complete another 3200 hours of supervised experience prior to taking the licensing examinations. Given that this individual has already completed 3000 hours of supervised experience and now acts as both a therapist and a supervisor for marriage and family therapy interns and associate clinical social workers, it is difficult to construct a rationale for requiring the additional supervised hours.

The question for the committee is whether the statutes should be altered to allow individuals in such situations to directly take the licensing examinations if they fulfill all other requirements.

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§4996.2. QUALIFICATIONS OF LICENSES

Each applicant shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.20, 4996.21, or 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

§4996.17. ACCEPTANCE OF EDUCATION AND EXPERIENCE GAINED OUTSIDE OF CALIFORNIA

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, has held a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

(3) The applicant's license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an

offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

§4996.23 SUPERVISED POST-MASTER'S EXPERIENCE CRITERIA EFFECTIVE JANUARY 1, 2002

The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c) (1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. In addition, an associate shall receive an average of at least one hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week. Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker. For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons receiving supervision.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives

of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(l) Associates shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

Board of Behavioral Sciences

Memo

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To: Policy and Advocacy Committee Members **Date:** April 1, 2009

From: Paul Riches, Executive Officer **Telephone:** (916) 574-7840

Subject: **Budget Update**

2008-2009 Fiscal Year

Attached are the current expenditure reports for the 2008-09 fiscal year. Each report reflects figures as of February 28, 2009. Currently the Board's expenditure report projects that we will have a year-end balance of approximately $240,000 in FY 2008-09. The Mental Health Services Act (MHSA) expenditure report projects approximately $30,000 balance in FY 2008-09.

As of September 2008, our fund condition reflects 7 months in reserve. The fund condition report notes $9 million in outstanding general fund loans.

Executive Order S-16-08 directs that effective February 1, 2009, through June 30, 2010, all non-manager employees shall be furloughed two days per month. Essentially, this means each BBS employee will incur a 10% reduction in salary. The five managers will also incur a 10% reduction in salary and be subject to the furlough order. The Service Employees International Union Local 1000 (which represents the board's rank and file employees) has ratified a new collective bargaining agreement (CBA). However, this agreement must be approved by the Legislature before it becomes effective. If the CBA is approved by the Legislature, it would reduce the furloughs for rank and file employees to one day per month which is approximately a 5% reduction in pay.

2009-10 Fiscal Year

Recent budget negotiations between the Governor and the Legislature resulted in changes to the current fiscal year budget (FY 08-09) and in the passage of a budget for the next fiscal year (FY 09-10). That budget included funding to implement the board's regulation requiring retroactive fingerprinting of all BBS licensees. Spending authority for FY 09-10 is $6.9 million in BBS funds and $300,000 in Mental Health Services Act funds for a total of $7.2 million.

With a budget in place for FY 09-10 we will not experience many of the administrative obstacles that have become routine during the annual budget standoff. However, it appears likely that there will be extensive ongoing discussions regarding budgetary shortfalls throughout the summer. The February budget solutions were based on revenue and caseload projections developed in December. State revenues have continued to fall and demand for services has increased as the overall economic conditions have worsened. These pressures have combined to worsen the budget outlook significantly. The Legislative Analyst recently released projections indicating an $8 billion deficit through the end of June 2010. The

deficit may well increase if economic conditions continue to worsen through that time period. [The LAO budget summary and outlook report is attached for your information]

The February budget package is also dependent on passage of several ballot measures scheduled for a May 19, 2009 special election. Those initiatives collectively provide approximately $6 billion in added revenue. However, recent polling indicates that the ballot measures are not likely to pass. If those measures do not pass, the deficit figure will grow to $14 billion. Continuing deterioration in economic conditions is also likely to increase that figure. The Department of Finance has deferred this year's May Revision report on budget conditions until June 8, 2009 to allow the results of the May 19 special election to be factored into the report.

The negotiations on resolving this budget problem are likely to be protracted and contentious. While the board does have a budget in place to operate through FY 09-10, it is reasonable to presume that we will experience added restrictions on our program as a result of the budget negotiations.

BBS EXPENDITURE REPORT FY 2008/2009

OBJECT DESCRIPTION	07/08 ACTUAL EXPENDITURES	FY 2008/09 BUDGET ALLOTMENT	FY 2008/09 CURRENT AS OF 2/28/09	FY 2008/09 PROJECTIONS TO YEAR END	FY 2008/09 UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	1,298,444	1,655,432	934,378	1,436,782	218,650
Salary & Wages (Stat Exempt)	94,224	91,128	62,091	90,298	830
Temp Help (907)(Seasonals)	44,576	105	12,853	30,000	(29,895)
Temp Help (915)(Proctors)	0	444	0		444
Board Memb (Per Diem)	13,700	12,900	3,800	10,000	2,900
Overtime	9,587	7,533	34,309	75,000	(67,467)
Totals Staff Benefits	583,222	679,541	430,748	573,510	106,031
Salary Savings		(73,601)			(73,601)
TOTALS, PERSONAL SERVICE	2,043,753	2,373,482	1,478,178	2,215,590	157,892
OPERATING EXP & EQUIP					
Fingerprint Reports	3,643	36,954	3,649	13,044	23,910
General Expense	58,832	36,326	37,065	60,000	(23,674)
Printing	**74,714**	**101,847**	**47,176**	**80,000**	21,847
Communication	8,686	29,200	6,887	10,500	18,700
Postage	**58,963**	**112,435**	**40,831**	**65,448**	46,987
Travel, In State	**107,417**	**94,948**	**49,465**	**80,000**	14,948
Travel, Out-of-State	3,010	3,002	0	0	3,002
Training	**12,612**	**19,730**	**4,769**	**10,000**	9,730
Facilities Operations	166,323	211,039	111,461	164,760	46,279
C&P Services - Interdept.	0	14,360	0	0	14,360
C&P Services-External Contract	**85,429**	**10,553**	**1,596**	**70,000**	(59,447)
DEPARTMENTAL PRORATA					
DP Billing	331,489	408,305	272,200	408,305	0
Indirect Distribution Costs	300,896	353,159	235,440	353,159	0
Public Affairs	15,114	17,602	11,736	17,602	0
D of I Prorata	10,020	14,253	9,504	14,253	0
Consumer Relations Division	11,989	17,302	11,536	33,200	(15,898)
OPP Support Services	448	471	0	471	0
Interagency Services (OER IACs)	205,304	235,568	110,299	230,000	5,568
Consolidated Data Services	2,500	23,437	1,305	15,000	8,437
Data Proc (Maint,Supplies,Cont)	27,654	7,072	8,378	16,000	(8,928)
Statewide Pro Rata	193,601	211,637	158,727	211,637	0
EXAM EXPENSES					
Exam Site Rental	108,523	95,769	45,749	80,000	15,769
Exam Contract (PSI) (404.00)	352,630	400,278	214,611	380,000	20,278
Expert Examiners (404.03)	326,525	283,818	162,925	325,000	(41,182)
ENFORCEMENT					
Attorney General	449,616	443,542	349,118	530,000	(86,458)
Office of Admin. Hearing	66,380	104,568	41,808	67,000	37,568
Court Reporters	6,737	0	1,291	2,100	(2,100)
Evidence/Witness Fees	42,594	68,570	21,947	36,500	32,070
Division of Investigation	341,690	295,306	196,872	294,525	781
Minor Equipment (226)	**33,938**	**33,800**	**34,666**	**33,800**	0
Major Equipment (Replace/Addi	**0**	**5,000**	**0**	**5,000**	0
TOTAL, OE&E	3,407,277	3,689,851	2,191,013	3,607,304	82,547
TOTAL EXPENDITURES	**5,451,030**	**$6,063,333**	**$3,669,191**	**$5,822,894**	240,439
Fingerprints	(3,762)	(24,000)			
Other Reimbursements	(20,050)	(26,000)			
Unscheduled Reimbursements	(24,820)	0			
Total Reimbursements	(48,632)	(50,000)			
NET APPROPRIATION	**5,402,398**	**$6,013,333**	**$3,669,191**	**$5,822,894**	**$240,439**

BOARD OF BEHAVIORAL SCIENCES
Analysis of Fund Condition

(Dollars in Thousands)

NOTE: $9.0 Million General Fund Repayment Outstanding

	Actual 2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
BEGINNING BALANCE	$ 6,273	$ 7,048	$ 4,174	$ 3,242	$ 2,162	$ 1,440
Prior Year Adjustment	$ 59	$ -	$ -	$ -	$ -	
TOTAL ADJUSTED RESERVES	$ 6,332	$ 7,048	$ 4,174	$ 3,242	$ 2,162	$ 1,440
REVENUES AND TRANSFERS						
Revenues:						
Fees	$ 5,737	$ 5,801	$ 5,858	$ 5,858	$ 5,858	$ 5,858
Interest	$ 295	$ 342	$ 144	$ 42	$ 28	$ 11
Totals, Revenues	$ 6,032	$ 6,143	$ 6,002	$ 5,900	$ 5,886	$ 5,869
Transfers from Other Funds						
F00683 Teale Data Center	$ -	$ -	$ -	$ -	$ -	$ -
Tranfers to Other Funds						
General Fund Loan		(3000)				
TOTAL REVENUES AND TRANSFERS	$ 6,032	$ 3,143	$ 6,002	$ 5,900	$ 5,886	$ 5,869
TOTAL RESOURCES	$ 12,364	$ 10,191	$ 10,176	$ 9,142	$ 8,048	$ 7,309
EXPENDITURES						
Disbursements:						
State Controller (State Operations)	$ 4	$ 4	$ -	$ -	$ -	
Program Expenditures (State Operations)	$ 5,312	$ 5,961	$ 6,267	$ 6,128	$ 6,251	$ 6,376
Projected Expenses (BCPs)		$ 52	$ 667	$ 852	$ 357	$ 357
TOTA	$ 5,316	$ 6,017	$ 6,934	$ 6,980	$ 6,608	$ 6,733
FUND BALANCE						
Reserve for economic uncertainties	$ 7,048	$ 4,174	$ 3,242	$ 2,162	$ 1,440	$ 576
Months in Reserve	**14.1**	**7.2**	**5.6**	**4.1**	**2.7**	**1.1**

NOTES:

ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 20010-11

MHSA EXPENDITURE REPORT FY 2008/09

OBJECT DESCRIPTION	2007/08 ACTUAL EXPENDITURES	FY 2008/09 BUDGET ALLOTMENT	CURRENT AS OF 2/28/2009	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONAL SERVICES					
Salary & Wages (Civ Svc Perm)	35,055	64,000	43,652	66,148	(2,148)
Totals Staff Benefits	14,356	26,511	17,420	27,782	(1,271)
Salary Savings		(3,083)			(3,083)
TOTALS, PERSONAL SERVICES	**49,411**	87,428	61,072	93,930	(6,502)
OPERATING EXP & EQUIP					
General Expense	926	5,772	2,718	15,400	(9,628)
Printing	0	800	0	500	300
Communication	0	1,000	510	800	200
Postage	0	800	0	500	300
Travel, In State	2,515	200	314	500	(300)
Training	550	1,000	600	1,000	0
Facilities Operations	1,330	2,000	1,548	2,400	(400)
Minor Equipment (226) & Data Processir	2,899	0	346	500	(500)
C&P Svcs - External (402)		200,000	28,054	155,400	44,600
TOTAL, OE&E	**8,220**	**211,572**	**34,090**	**177,000**	**34,572**
TOTAL EXPENDITURES	**57,631**	**$299,000**	**$95,162**	**$270,930**	**$28,070**

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LAO

Mac Taylor
Legislative Analyst

March 13, 2009

2009-10 Budget Analysis Series

The Fiscal Outlook Under the February Budget Package

CONTENTS

SUMMARY

Impressive Progress on Balancing 2009-10 Budget...

The budget package of $42 billion in solutions adopted by the Legislature and the Governor in February was an impressive step in addressing the state's monumental budget shortfall. The package has a number of positive characteristics. By taking early action, the package allows solutions to be fully implemented by the start of 2009-10 so that full-year savings are generated. The budget uses both sides of the ledger—revenue increases and spending reductions—to attack the state's dire fiscal situation. In addition, other than preserving the lottery borrowing proposal developed in 2008, the package resists adding significant amounts of new budgetary borrowing.

...But More Work to Be Done

Unfortunately, the state's economic and revenue outlook continues to deteriorate. Even in the few weeks since the budget was signed, there have been a series of negative developments. Our updated revenue forecast projects that revenues will fall short of the assumptions in the budget package by $8 billion. Consequently, the Legislature and Governor will need to adopt billions of dollars in additional solutions in the coming months to bring the 2009-10 budget back into balance. Moreover, a number of the adopted solutions—revenue increases and spending reductions—are of a short-term duration. Thus, without corrective actions, the state's huge operating shortfalls will reappear in future years—growing from $12.6 billion in 2010-11 to $26 billion in 2013-14.

Budget Counts on Nearly $6 Billion From the May Election

The budget package relies on the passage of three ballot measures to provide nearly $6 billion in 2009-10 solutions—$5 billion from the borrowing of future lottery profits (Proposition 1C), about $600 million by redirecting dedicated childhood development funds (Proposition 1D), and about $230 million by redirecting dedicated mental health funds (Proposition 1E). If these measures were to fail, the Legislature would need to quickly develop even more solutions before the start of the fiscal year as alternatives.

In future years, if all six measures on the special election ballot were to pass, the state's finances would be affected in a number of ways. Propositions 1D and 1E would provide General Fund relief for a limited number of years. On the other hand, under our projections, Proposition 1B (education supplemental payments) and Proposition 1C would drive up General Fund costs by more than $1 billion annually by 2013-14. The fiscal effect of Proposition 1A, dealing with the Budget Stabilization Fund (BSF) "rainy day" reserve, is the most uncertain. While the measure would help balance future state budgets by extending recent tax increases for up to

two years, it could also take billions of dollars "off the table" by requiring their deposit into the BSF. If the state is not always able to access these funds under Proposition 1A's rules, the state's budget shortfalls would grow even further in some years.

Closing the Additional Budget Gap

We recommend that the Legislature take a two-pronged approach in addressing the projected $8 billion drop in revenues:

- ***Optimize the Use of Federal Funds.*** With the drop in revenues, the minimum guarantee for K-14 education under Proposition 98 will also drop. This will allow the state to use billions of additional federal dollars to offset General Fund education costs currently budgeted. The Legislature should take advantage of this opportunity to lower General Fund spending to the minimum guarantee while preserving the level of support for these educational programs envisioned in the enacted budget package. While seeking to offset 2009-10 General Fund costs is the most immediate concern for the use of federal funds, the Legislature should also seek to preserve as many federal dollars as possible to help balance the budget in future years—as opposed to committing them now for augmentations.

- ***Continue Work on More Solutions.*** The Legislature should use the spring budget process to continue developing programmatic solutions. We provide a list of options from our recent publications to reduce spending and increase revenues (without additional rate increases).

OVERVIEW

The national recession and financial market credit crunch have dragged down California's economy and state revenues. The *2009-10 Governor's Budget* projected that the state would end 2009-10 with a $40 billion deficit if no corrective actions were taken. In response, in February 2009, the Legislature and the Governor agreed to a $42 billion package of solutions (including the Governor's vetoes of almost $1 billion). This package includes spending reductions, temporary tax increases, the use of federal stimulus funds, and borrowing from future lottery profits. Almost $6 billion of the package depends on voter approval at a May 19, 2009 special election.

Unfortunately, the state's economic outlook since the release of the Governor's budget has continued to deteriorate. Consequently, we project that the Legislature and the Governor will need to agree to billions of dollars in additional budgetary solutions to rebalance the 2009-10 budget. This report first highlights the major components of the $42 billion package, then lays out our office's new long-term forecast of the state's revenues and spending, and concludes with key considerations for the Legislature as it moves forward with its budget planning.

CLOSING A $40 BILLION SHORTFALL

Major Solutions

Figure 1 (see next page) summarizes the adopted $42 billion package which closed a $40 billion shortfall and built up a $2 billion reserve. The four main components of the budget package, described in more detail below, are:

- ***Spending Reductions.*** The package includes more than $15 billion in spending-related reductions. The largest reductions relate to K-12 schools, which experience both reductions to base program funding and the deferral of payments to future years. Reductions also include furloughing state workers, eliminating inflationary adjustments for many programs, and making other reductions in services.

- ***Tax Increases.*** The package includes about $12.5 billion in temporary tax increases. Most of these higher taxes are the result of increased rates for the sales and use tax (SUT), vehicle license fee (VLF), and personal income tax (PIT).

- ***Borrowing.*** The package counts on $5 billion from the borrowing of future lottery profits, which requires the passage of Proposition 1C at the May special election.

- ***Federal Funds.*** The package also assumes receipt of $8.5 billion in federal funds from the recent economic stimulus law to help balance the budget.

Triggers

The budget package contains two "triggers" which modify the details of the plan if certain events happen.

Federal Funds Trigger. At the time the budget was adopted, the total amount of funds that the state would receive from the federal govern-

ment as part of the economic stimulus package was not known. In particular, it was unclear what portion of those dollars received would be able to be used to offset General Fund costs. The budget package currently relies on $8.5 billion in federal economic stimulus funds to offset General Fund costs through 2009-10. If it is determined that more than $10 billion will be available, then $2.8 billion in spending reductions and tax increases included in the budget package would not go into effect.

Proposition 1A Trigger. The temporary tax increases adopted as part of the budget are scheduled to last about two years. If Proposition 1A (which makes changes to state budget practices) on the special election ballot passes, however, these tax increases would be extended for one to two years. Specifically, the SUT increase would be extended one year, and the VLF and PIT-related changes would be extended two years.

General Fund Condition

Figure 2 shows the state's General Fund condition under the adopted budget package's assumptions. Under these assumptions, the state would end the current year with a $3.4 bil-

Figure 1

How the February 2009 Budget Package Closes the $40 Billion Shortfall

(In Millions)

	2008-09	2009-10	Two-Year Total
Tax Increases			
Increase sales tax by 1 cent	$1,203	$4,553	$5,756
Increase vehicle license fee by 0.5 percent	346	1,692	2,038
Increase personal income tax rates by 0.25 percentage point	—	3,658	3,658
Reduce dependent credit	—	1,440	1,440
Create new tax credits	-15	-363	-378
Subtotals	($1,534)	($10,980)	($12,514)
Spending-Related Savings			
Reduce Proposition 98 spending	$5,775	$2,647	$8,422
Reduce health and social services spending	131	1,518	1,650
Furlough state workers and reduce other employee costs	333	834	1,167
Reduce higher education spending	132	756	888
Seek voter approval to redirect Propositions 10 and 63 monies	—	835	835
Redirect transportation funds	254	407	661
Reduce Corrections and Rehabilitation (Governor's veto)	—	400	400
Reduce other spending	140	1,198	1,337
Subtotals	($6,765)	($8,594)	($15,360)
Borrowing			
Issue lottery bonds	—	$5,001	$5,001
Borrow from special funds	$234	94	328
Subtotals	($234)	($5,095)	($5,329)
Federal Stimulus Funds	$2,825	$5,701	$8,527
Total Solutions	**$11,358**	**$30,371**	**$41,730**

lion deficit. In 2009-10, the state would spend $92.2 billion—$5.5 billion less than the $97.7 billion in expected revenues. This difference would allow the state to cover the 2008-09 ending deficit and build up a $2.1 billion reserve.

Budget Process for 2009-10

The budget package includes 36 bills (see Figure 3 on the next page), including revisions to the *2008-09 Budget Act* and adoption of a new *2009-10 Budget Act*. In other words, the state has already adopted its 2009-10 budget—more than four months before the start of the fiscal year. Such an early adoption is unprecedented and requires some adjustments to the normal budget process. For instance, the enacted 2009-10 budget used the Governor's proposed budget as its base but deleted a number of the administration's proposals "without prejudice." These proposals were not considered in the accelerated adoption of the budget. Instead, it is the intent of the Legislature to consider the proposals as part of the normal legislative process. Among the key items for which the Legislature deferred action are:

- $744 million in lease-revenue bond funding for University of California (UC) and California State University (CSU) capital outlay projects.
- $290 million in lease-revenue bonds for CalFire capital projects (mainly fire stations).
- The Governor's Emergency Response Initiative and a new surcharge on property insurance premiums statewide.
- $39 million (mainly bond funds) for various Delta-related projects and various changes for the State Water Project.
- $123 million in high-speed rail bond expenditures.
- Reorganization proposals, such as the decentralization of Cal Grant financial aid and expansion of the Office of the Chief Information Officer.
- $36 million for increased correctional officer overtime.

In addition, the budget package authorizes the administration to delay the release of the May Revision until after the special election.

Figure 2

General Fund Condition Under February Budget Package

(In Millions)

	2008-09	2009-10
Prior-year fund balance	$2,376	-$2,341
Revenues and transfers	89,372	97,729
Total Resources Available	$91,748	$95,388
Expenditures	$94,089	$92,206
Ending Fund Balance	-$2,341	$3,182
Encumbrances	1,079	1,079
Reserve	**-$3,420**	**$2,103**
Budget Stabilization Account	—	—
Special Fund for Economic Uncertainties	-$3,420	$2,103

PROGRAMMATIC FEATURES OF THE PACKAGE

Below, we provide more details on the February budget package, including the spending reductions and tax increases.

Proposition 98 K-14 Education

The February budget package includes major changes in Proposition 98 funding for 2008-09 and 2009-10. Figure 4 summarizes changes

Figure 3

2009-10 Budget and Budget-Related Legislation

Bill Number	Chapter	Author	Subject
SB 1xxx	1	Ducheny	*2009-10 Budget Act*
SB 2xxx	2	Ducheny	Changes to *2008-09 Budget Act*
SB 4xxx	12	Ducheny	Education
SB 6xxx	13	Ducheny	Human services
SB 7xxx	14	Ducheny	Transportation
SB 8xxx	4	Ducheny	General government
SB 10xxx	15	Ducheny	Proposition 1E
SB 14xxx	16	Ducheny	Prison facilities
SB 15xxx	17	Calderon	Tax credits and sales factor
SB 19xxx	7	Ducheny	Elections
SB 20xxx	3	Maldonado	State Controller
SB 3xx	1	Florez	Farm equipment and air quality
SB 4xx	2	Cogdill	Design-build and public private partnerships
SB 7xx	4	Corbett	Residential foreclosures
SB 9xx	7	Padilla	Prevailing wage
SB 10xx	8	Oropeza	Vehicle license fee (VLF) and rental cars
SB 11xx	9	Steinberg	Judicial employment benefits
SB 12xx	10	Steinberg	Court facilities financing
SB 15xx	11	Ashburn	New home purchase credit
SB 16xx	12	Ashburn	Horse racing
SB 6	1	Maldonado	Open primaries statutory changes
SCA 4	2	Maldonado	Open primaries proposition
SCA 8	3	Maldonado	Proposition 1F
AB 3xxx	18	Evans	VLF, income tax, and sales tax increases
AB 5xxx	20	Evans	Health
AB 11xxx	6	Evans	Special election
AB 12xxx	8	Evans	State lottery
AB 13xxx	9	Evans	Cash management
AB 15xxx	10	Krekorian	Tax credits and sales factor
AB 16xxx	5	Evans	Federal fund trigger
AB 17xxx	11	Evans	Proposition 1D
ACA 1xxx	1	Niello	Proposition 1A
ACA 2xxx	2	Bass	Proposition 1B
AB 5xx	3	Gaines	Alternative work week
AB 7xx	5	Lieu	Residential foreclosures
AB 8xx	6	Nestande	California Environmental Quality Act

for K-12 education, the California Community Colleges, and other Proposition 98-supported agencies (including state special schools and the Division of Juvenile Facilities).

Budget Package Makes Considerable Reductions to 2008-09 Proposition 98 Spending… Continued deterioration of the state's revenues has led to a decline in the Proposition 98 funding requirement (known as the minimum guarantee), allowing the state to reduce spending for K-14 education in the current year. The budget package spends at the revised estimate of the minimum guarantee—$50.7 billion, which is $7.3 billion less than the original *2008-09 Budget Act* spending level (enacted in September 2008). As shown in Figure 4, the bulk of this midyear reduction ($7 billion) is borne by K-12 education.

…But Relies Heavily on Deferrals and Funding Swaps. Of the $7.3 billion reduction in current-year Proposition 98 spending, $2.4 billion represents a cut to K-14 programs (see Figure 5 on the next page). The largest reductions, all affecting K-12 schools, are split between revenue limits and categorical programs—$944 million each. To achieve these savings, roughly 50 K-12 categorical programs are reduced by 15 percent. The remaining $5 billion in Proposition 98 adjustments (also shown in Figure 5) represent deferrals and funding swaps rather than ongoing reductions to K-14 programs. Specifically, the budget package defers $3.2 billion in K-14 payments to July 2009. Under this approach, schools and colleges continue to incur costs in the current fiscal year, but state payments will not be made until the next fiscal year. The budget also retires the state's existing prior-year Proposition 98 settle-up obligations ($1.1 billion) and uses special funds to directly support the Home-to-School Transportation program ($619 million). Both of these changes provide K-12 schools with the same level of program funding but reduce 2008-09 Proposition 98 spending to the minimum guarantee.

2009-10 Budget Continues, Deepens K-12 Program Cuts. Proposition 98 funding increases by $4.2 billion from the revised 2008-09 level to the enacted 2009-10 level. As shown in Figure 5, however, the budget includes $4.6 billion

Figure 4

Proposition 98 Funding

(In Millions)

	2008-09			2009-10	
	September Budget Act	Revised	Change	Enacted[a]	Change From 2008-09 Revised
K-12 education	$51,620	$44,660	-$6,960	$48,315	$3,654
California Community Colleges	6,359	5,972	-387	6,482	510
Other agencies	106	106	—	107	1
Totals	**$58,086**	**$50,738**	**-$7,347**	**$54,904**	**$4,165**
General Fund	$41,943	$35,036	-$6,907	$39,461	$4,426
Local property tax revenue	16,143	15,703	-440	15,442	-260
K-12 funding per average daily attendance	**$8,719**	**$7,543[b]**	**-$1,176**	**$8,185**	**$642**

[a] Amounts do not include Proposition 98 backfill of lottery funds.

[b] Reflects amount of per-pupil Proposition 98 funding. Adjusting for fund-source swaps and deferrals, programmatic per-pupil funding is $8,332.

to backfill for the one-time 2008-09 solutions. To accommodate this backfill, as well as fund $253 million in new growth and baseline adjustments, the 2009-10 budget package sustains the current-year programmatic cuts and makes $702 million in additional reductions to K-12 and

Figure 5

February Proposition 98 Package

(In Millions)

September *2008-09 Budget Act* Spending	**$58,086**
Programmatic Reductions	
Reduce base K-12 revenue limits	-$944
Reduce most categorical programs across the board	-944
Rescind K-14 cost-of-living adjustment	-287
Other	-210[a]
Subtotal	(-$2,384)
2008-09 Programmatic Spending Level	**$55,701**
Other Adjustments in Proposition 98 Spending	
Defer certain K-14 payments	-$3,244[b]
Retire settle-up obligation	-1,101
Use special funds for Home-to-School Transportation	-619
Subtotal	(-$4,963)
2008-09 Revised Proposition 98 Spending Level	**$50,738**
Growth and baseline adjustments	$253[c]
Backfill 2008-09 One-Time Solutions	
2008-09 deferrals	$3,244
Settle-up	1,101
Home-to-School Transportation	214
Other	56
Subtotal	($4,614)
Other Budget Reductions	
Further reduce most categorical programs	-$268
Further reduce K-12 revenue limits	-268
Eliminate High Priority Schools program	-114
Modify child care fee and rate policies	-53
Subtotal	(-$702)
2009-10 Proposition 98 Spending Level	**$54,904[d]**
Special funds for Home-to-School Transportation	$408
2009-10 Programmatic Spending Level	**$55,312**

a Includes $160 million technical reduction to current-year funds expected to go unused.

b Of these deferrals, $2.3 billion is from K-12 principal apportionment programs, $570 million is from K-3 class size reduction, and $340 million is from community college apportionments.

c Adjustments include $185 million for 3 percent growth at California Community Colleges, $19 million for 1.2 percent growth in child care programs, and savings of $111 million from an expected decline of 0.3 percent in K-12 average daily attendance. Total also includes $162 million in other baseline adjustments.

d Excludes lottery backfill. With lottery backfill ($1.062 billion), Proposition 98 spending would be $55.966 billion.

child care programs. As in the current year, the bulk of the cuts are made through revenue limit reductions and across-the-board cuts to categorical programs ($268 million for each category). Compared to the original *2008-09 Budget Act*, the cumulative 2009-10 reduction for the roughly 50 targeted categorical programs is 20 percent. The school district revenue limit deficit factor through 2009-10 (including foregone inflationary adjustments) is 13.1 percent. The budget also captures savings by eliminating the High Priority Schools Grant Program ($114 million) and making changes to child care provider reimbursement rates and family fees ($53 million).

Budget Package Makes Significant Changes to Rules Governing Categorical Program Funds. In addition to the program reductions noted above, the budget package dramatically loosens restrictions on how school districts may use the bulk of their categorical program funds. While funding will continue to be distributed in the same manner as in previous years, districts will have full discretion to use this funding how they choose, beginning in the current year and continuing through 2012-13. For example, they may transfer funding originally intended for counselors and instead use it to purchase textbooks or transfer funding originally intended for professional development and use it to increase teacher salaries. This flexibility provision applies to about 40 (of the roughly 60) existing K-12 categorical programs and over one-third of K-12 categorical funding.

Other Spending Solutions

Outside of Proposition 98, the budget package generates $7 billion in spending-related savings by suspending cost-of-living adjustments (COLAs), using alternative funding sources outside of the General Fund, deferring some costs, and making targeted programmatic reductions.

No COLAs

Current estimates are that inflation growth will be minimal in 2009-10 (or perhaps even negative by some measures). The budget suspends COLAs that would otherwise be due to various programs. In total, these suspensions reduce General Fund costs by about $1.2 billion, as shown in Figure 6.

Figure 6

Budget Package Suspends Many Cost-of-Living Adjustments (COLAs)[a]

(In Millions)

Program	COLA	2008-09 and 2009-10 Savings
SSI/SSP	Pass-through of federal January 2009	$567
SSI/SSP	June 2010	27
UC and CSU	Inflation (per Governor's compact)	299
State operations	Operational expenses	136
CalWORKs	July 2009	79
Trial courts	State Appropriations Limit adjustment	33
Medi-Cal county administration	July 2009	25
Total		**$1,166**

[a] The budget also suspends COLAs for K-14 education programs within the Proposition 98 adjustments.

Fund Shifts and Deferred Spending

Fund Shifts. The budget package uses about $1 billion in fund shifts to help balance the budget. The two largest such shifts—using Proposition 10 ($608 million) and Proposition 63 ($227 million) funds to benefit the General Fund—require voter approval and will appear on the special election ballot.

Deferred Spending. The budget also defers about $500 million in costs for expenses that the state will face in future years. For instance, the package redirects $200 million in tribal revenues to the General Fund that otherwise would have helped pay off prior transportation loans. The budget also defers $91 million in mandate reimbursements to local governments.

Program Spending Reductions

The budget package makes more than $4 billion in program spending reductions (outside of Proposition 98). As discussed later in this report, some of these reductions would be affected by the federal trigger.

Unspecified Corrections Reductions. The budget implements an unallocated 10 percent reduction ($180 million) to the Receiver's medical services budget. In addition, the Governor vetoed $400 million from the California Department of Corrections and Rehabilitation (CDCR) budget. At this time, it is unknown how savings of this amount will be achieved.

Health Reductions. The budget eliminates certain optional Medi-Cal benefits, such as dental services, and reduces reimbursements to public hospitals—for combined General Fund savings of about $184 million in 2009-10. The budget also assumes $160 million in savings through regional center provider rate reductions and other measures that are being developed by the Department of Developmental Services in conjunction with stakeholders and other parties.

Social Services Reductions. The agreement reduces state In-Home Supportive Services (IHSS) participation in provider wages (currently $11.50 per hour) to $9.50. This results in savings of $74 million in 2009-10. (The budget agreement also eliminates state assistance with Medi-Cal co-payments for certain new IHSS recipients, for a savings of $4 million.) In the California Work Opportunity and Responsibility to Kids (CalWORKs) program and the Supplemental Security Income/State Supplementary Program (SSI/SSP), the package reduces grants (in addition to not providing COLAs). Specifically, the agreement reduces CalWORKs grants by 4 percent, resulting in annual saving of $147 million. The agreement reduces SSI/SSP grants by 2.3 percent, resulting in savings of $268 million.

Transportation. In order to avoid a funding shortfall in the Public Transportation Account, the budget package reduces current-year funding and suspends budget-year funding (through 2012-13) of the State Transit Assistance program. These actions achieve $460 million in General Fund savings in 2008-09 and 2009-10 combined.

Higher Education. The budget contains $232 million in unallocated reductions to the universities' base budgets. The package, however, does not direct the use of about $300 million in new fee revenues that would be generated by the universities and available to offset programmatic effects of the reductions.

Employee Compensation. For many of the state's bargaining units, the budget assumes the continued implementation of the Governor's two-day per month furlough program. For units represented by Service Employees International Union Local 1000, the budget reflects savings

similar to those that would be generated under recent agreements reached between the union and the administration—less than one-half of the savings per employee compared to the other units. (Approval of these agreements is pending before the Legislature.) In total, the budget package assumes $1.2 billion in savings in 2008-09 and 2009-10 combined.

Tax Changes

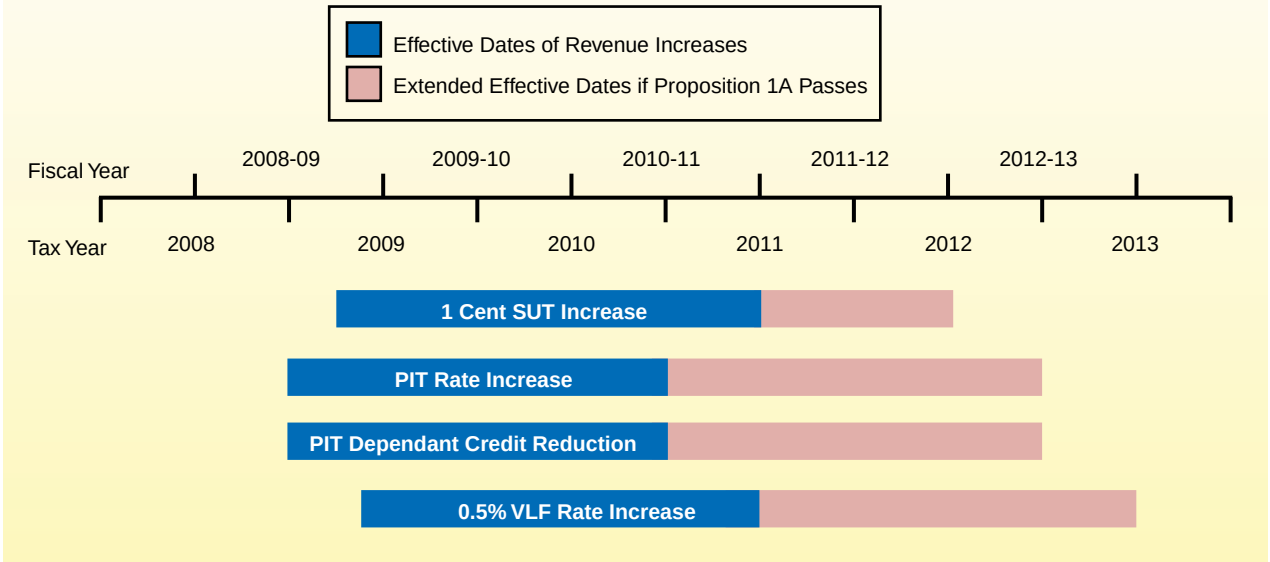
The budget package assumes an additional $12.5 billion in revenues over two fiscal years ($1.5 billion in 2008-09 and $11 billion in 2009-10) as a result of eight major changes to the state tax system. Four of the new provisions temporarily increase state taxes. The other new provisions reduce state taxes. These changes are described below, and their timing is summarized in Figure 7.

One Percent Sales Tax Increase. The budget package includes a one-cent increase in the state's SUT. The increase will become effective April 1, 2009—raising the state rate to 6 percent and the average state and local rate to almost 9 percent. The duration of the tax depends on whether Proposition 1A passes. If the measure fails, the higher tax will lapse on July 1, 2011. If the measure passes, the tax increase will be extended for one year. The budget assumes $1.2 billion in additional sales tax revenues in 2008-09 and $4.6 billion in 2009-10.

PIT Rate Increase. A 0.25 percentage point increase in the PIT rate is the second major tax increase. The change increases each of the seven PIT tax rates by one-quarter of 1 percent. For example, the top PIT rate in 2008 for most taxpayers was 9.3 percent. With this increase, the top rate will now be 9.55 percent. Similarly, the lowest rate will increase from 1 percent to 1.25 percent. This change is subject to *both* budget triggers. If the federal funds trigger is reached, this PIT rate increase would be cut in half (resulting in a 0.125 percentage point rate increase to each marginal rate). If Proposition 1A gains voter

Figure 7

Tax Increases Would Be Extended by Passage of Proposition 1A



approval, the PIT increase will end after tax year 2012. Otherwise, it will end after tax year 2010. The 0.25 increase is assumed to bring in $3.6 billion in additional revenues in 2009-10.

VLF Increase. The Legislature increased the VLF from 0.65 percent to 1.15 percent as part of the budget package. The VLF is essentially a personal property tax on cars and trucks. This change will become effective in May 2009 and is subject to the Proposition 1A trigger. If Proposition 1A passes, the higher tax rate sunsets on July 1, 2013. If it fails, the rate returns to the 0.65 percent level two years earlier on July 1, 2011. The budget assumes this increase will raise revenues by $346 million in 2008-09 and $1.7 billion in 2009-10. Revenues generated from about one-third of the increase (0.15 percent) would be dedicated to local government public safety grants (replacing General Fund spending).

Reduction in the Dependent Credit. The final tax increase is a reduction in the PIT dependent credit. The budget package reduces the dependent credit ($309 in 2008) to the same as the personal credit ($99 in 2008). This change is also subject to the Proposition 1A trigger—the credit would revert to the higher amount after tax year 2012 if the measure passes. If it fails, the higher credit will be reestablished after tax year 2010. The budget assumes the reduction in the dependent credit will increase revenues by $1.4 billion in 2009-10.

Tax Reductions Included in the 2009-10 Budget Package. The Legislature also enacted several measures that will reduce taxes for California taxpayers. Three of these measures temporarily reduce taxes during the next several years:

- ***Film Credit.*** A new tax credit for the film industry provides a tax credit for up to 25 percent of qualified expenditures of certain movies or television shows that are filmed in California. The credit is limited to $500 million in personal or corporate tax credits beginning in 2011-12 and ending in 2013-14.

- ***Hiring Credit.*** The budget package establishes a new employment credit in 2009 and 2010 for companies that increase net employment. They may receive a $3,000 credit for each additional employee. The credit is limited to $400 million over its life, and the budget assumes $345 million in lost revenues from this credit in 2008-09 and 2009-10 combined.

- ***New Home Purchase Credit.*** The budget package creates a credit for purchase of new homes equal to the lesser of $10,000 or 5 percent of the home's purchase price, spread evenly over each of the next three tax years. The credit only applies to primary residences purchased between March 1, 2009 and March 1, 2010, and taxpayers will forfeit the entire amount of the credit if they do not occupy the home for at least two years. This credit is limited to a total of $100 million, and the budget assumes $33 million in lost revenues in 2009-10.

Finally, the Legislature enacted legislation that permanently gives multistate or multinational corporations another option for determining the proportion of profits that is subject to California's corporate tax. Currently, companies must use a three-part formula that includes the proportion of total company sales, workforce, and property that are attributable to its California operations.

The new legislation allows companies the option to use only sales to determine income attributable to California. This "single factor" option becomes effective for the 2011 tax year, and therefore, has no impact on revenues in 2008-09 or 2009-10. This change, however, is expected to reduce state revenues by hundreds of millions—or perhaps billions—of dollars annually beginning in 2011-12.

Budgetary Borrowing

The budget package relies on $5 billion in 2009-10 borrowing from future lottery profits. This borrowing will be allowed only if the state's voters approve Proposition 1C at the special election. Lottery borrowing would involve selling bonds to investors, who would be paid back over 20 to 30 years. While the budget assumes that the state would borrow $5 billion, the proposition and related statutes do not limit the Legislature in the amount that could be borrowed in 2009-10 or future years. In addition, the budget borrows $328 million from various state special funds. The General Fund would generally need to repay these dollars over the next few years.

Federal Funds Trigger

As noted above, the budget package assumes $8.5 billion in General Fund solutions due to the receipt of federal economic stimulus funds. (This amount includes $510 million that the Governor vetoed from UC and CSU's budgets in anticipation of using federal education dollars to backfill the reductions.) The budget package contains a trigger that would eliminate some cuts and a tax increase if the Director of Finance and State Treasurer determine that the state could receive at least $10 billion in federal offsets to General Fund spending by June 30, 2010. This determination must be made by April 1, 2009. Figure 8 shows the $948 million in spending reductions and a $1.8 billion tax increase (one-half of the PIT rate increase) contained within the budget package that would be reversed if the state

Figure 8

Solutions Included in the 2009-10 Budget if the Federal Trigger Is Not Reached

(In Millions)

	2009-10
Expenditure Reductions	
Judicial Branch: One-time unallocated reduction to the trial courts	$100.0
Judicial Branch: Eliminate100 new judgeships	71.4
Medi-Cal: Eliminate certain optional benefits and cut public hospital reimbursement rates by 10 percent	183.6
CalWORKs: Reduce grants by 4 percent	146.9
SSI/SSP: Reduce grants by 2.3 percent	267.8
IHSS: Cap state participation at $9.50 per hour and share-of-cost proposal	78.0
Higher Education: Unallocated reduction	100.0
Subtotal	($947.7)
Revenue Increase	
Personal Income Tax: Increase rates by 0.125 percentage point	$1,829.0
Total Solutions	**$2,776.7**

reached this $10 billion amount in federal offsets. We discuss the receipt of federal funds in more detail in our recent publication, *Federal Economic Stimulus Package: Fiscal Effect on California*.

Use of the Ballot

The budget package includes six propositions that will appear on the May special election ballot:

- Proposition 1A makes changes to the state's budgeting practices and requires the state to set aside more funds in a rainy day reserve fund under certain conditions.
- Proposition 1B provides $9.3 billion in supplemental payments to education in lieu of existing 2007-08 and 2008-09 Proposition 98 maintenance factor obligations that otherwise would be created. Its provisions would go into effect only if Proposition 1A also passes.
- Proposition 1C authorizes the borrowing of future lottery profits.
- Proposition 1D allows the redirection of Proposition 10 dollars for child development programs to benefit the General Fund through 2013-14.
- Proposition 1E allows the redirection of Proposition 63 mental health dollars to benefit the General Fund through 2010-11. Specifically, the Proposition 63 funds would be redirected to the Early and Periodic Screening and Diagnosis Treatment program in place of General Fund support.
- Proposition 1F would limit state elected officials from receiving pay raises in certain cases when the state ends the year with a budget deficit.

We discuss the effect of these measures, if approved, on the state budget over the next few years later in this report. In addition, the budget package includes a ballot measure that would create an open primary system for future elections. This measure will appear on the June 2010 statewide ballot.

Cash Management

Cash Deferrals. In addition to the education deferrals discussed above (which cross fiscal years), the Governor's budget included numerous deferrals of payments (within a state fiscal year) to schools, local governments, and other entities in order to help the state manage its ongoing cash flow problems. The budget package enacts a series of deferrals that were based on these original proposals, but shortened the length of many of them. Figure 9 summarizes the cash deferrals included in the enacted package.

Revenue Anticipation Warrants (RAWs). In January, the Governor proposed to use $4.7 billion in RAW borrowing as a budget balancing tool. The enacted budget does not rely on RAWs to close the $40 billion shortfall. However, it is possible that the state will still issue RAWs in the coming months in their traditional role as a cash flow tool.

Economic Stimulus

In addition to some of the tax reduction measures discussed earlier, the package includes several statutory measures intended to improve

economic conditions and speed up construction of certain projects. For instance, the package creates a 90-day moratorium on home foreclosures in certain cases. The package also provides exemptions from the California Environmental Quality Act for some projects. The use of design-build and public private partnerships for the construction of state and local government projects is expanded. The package also includes statutory changes to expedite the construction of new state prisons.

Figure 9

Additional Payment Deferrals Contained in the February Budget Package

2008-09 and 2009-10

K-14 Education
✓ Defer $2.7 billion of payments to schools from July and August 2009 to October 2009.
Transportation
✓ Defer transfers of $300 million of gas tax revenues to counties and cities for local street and road projects from February through April 2009 until May 2009.
Medi-Cal
✓ Defer $874 million of various Medi-Cal payments from March 2009 to April 2009.
Payments to Counties
✓ Defer $714 billion of various social services payments to counties from July and August 2009 until September 2009.
✓ Defer $92 million of mental health cash advances to counties from July 2009 to September 2009.
Developmental Services
✓ Defer $400 million of payments for regional centers from July and August 2009 to September 2009.
Payments to Health Plans for State Retiree Health Benefits
✓ Defer $194 million of payments for state retiree health benefits from February and March 2009 to April 2009.
Mandates
✓ Defer $142 million of local mandate reimbursements from August 2009 to October 2009.
Federal Government
✓ Defer $517 million of payments to the federal government related to Supplemental Security Income/State Supplementary Program from February and March 2009 to April 2009.

IMPLICATIONS OF THE PACKAGE ON THE STATE'S BUDGET CRISIS

We have updated our economic and revenue forecast based on data and information made available since the Governor's budget was released. In addition, we have updated our forecast of spending over the next five years based on the decisions made in the February package. Below, we discuss the implications of these new projections and the May special election on the state's fiscal outlook.

Impressive Progress on Balancing the 2009-10 Budget

The Legislature and Governor's February budget agreement was an impressive effort to tackle a monumental $40 billion shortfall. Among its positive attributes:

- ***Early Action.*** By taking action in February on the 2009-10 budget, the package captures billions of dollars in savings in the current year. In addition, the early enactment allows solutions to be implemented now so that full-year savings can be generated in 2009-10.

- ***Balanced Approach.*** The budget uses both sides of the ledger—revenue increases and spending reductions—to attack the state's fiscal woes.

- ***Minimal New Borrowing.*** The 2008-09 budget enacted in September 2008 already had laid the groundwork for the $5 billion in borrowing from future lottery profits. Other than the addition of a few hundred million dollars in special fund borrowing, the February package resisted a major expansion of the state's budgetary borrowing (such as the Governor's RAW proposal).

Risks Within the Package. Despite the impressive progress that the package makes in bringing the state's finances back into balance, it is not without its risks. The two largest risks of not achieving the intended solutions are:

- ***Ballot.*** The package relies on the state's voters providing authority for nearly $6 billion in 2009-10 solutions. If the measures related to the lottery, Proposition 10, and Proposition 63 are defeated, the state will need to quickly develop alternatives.

- ***Corrections Savings.*** As described above, the budget relies on almost $600 million in unspecified CDCR savings from reducing the Receiver's budget and the Governor's veto. In both cases, no programmatic changes were made to accompany the reductions. Consequently, achieving these savings will require additional actions by the Legislature and the administration.

Economic and Revenue Outlook

Below, we discuss our updated economic and revenue forecast.

Economic Forecast

National Recession. The outlook for the national economy remains grim. Virtually all indicators of economic activity are negative. The

revised gross domestic product (GDP) in the fourth quarter of 2008 fell more than 6 percent. Large-scale layoffs have continued in 2009. Foreign trade has slowed markedly, weakening the strongest sector of the national economy over the past year. The federal government continues to grapple with the near collapse of the nation's financial and credit markets.

California's Economy. The economic situation in California is similar. Consumer spending continues a downward trend. Car sales in the fourth quarter of 2008 were almost 40 percent below levels reached a year earlier. Unemployment rates have risen unusually quick, increasing from 8 percent in October 2008 to 10.1 percent in January 2009. Housing prices continue to decline, but sales have increased—providing a glimmer of hope that the housing market might begin to stabilize in the coming months.

Delayed Recovery—Slow Long-Term Growth. Our current economic forecast projects a recovery beginning in the first quarter of 2010. Over the next five years, however, our forecast projects relatively slow growth compared to past recoveries. In our view, weakness in the finance, housing, and export markets are likely to keep the national economy from expanding at rates that typically occur after a recession. While our forecast is similar to the economic outlook shared by many economists, some see recovery taking even more time.

Figure 10 summarizes our revised forecast for two key economic variables for California—growth in personal income and employment. We project that:

- Personal income growth will remain stagnant in 2009. Growth resumes in 2010 but at a very sluggish pace. Stronger growth is projected beginning in 2011, but at rates under 6 percent (levels typically experienced after a recession) for the next five years.

- Employment will fall in 2009 and 2010. Beginning in 2011, employment is projected to be subdued and increase by about 2 percent a year.

Figure 10

Weak Recovery Anticipated for California

(Annual Percentage Change)

Revenue Projections

The weakening economic outlook has taken its toll on projections of state revenues. In the few weeks since the Governor signed the budget package, the following negative developments have occurred:

- The state's unemployment rate rose from 8.7 percent in December to 10.1 percent in January. The national unemployment rate rose from 7.6 percent to 8.1 percent in February.
- The federal government reported that GDP for the fourth quarter of 2008 fell at a 6.2 percent annual rate, worse than the previous estimate of a 3.8 percent drop.
- Receipts for the state's big three taxes (PIT, SUT, and corporate income tax) were collectively $815 million below the forecast for February.
- The stock market has continued to slide.

2009-10 Revenues Down Significantly. Our current forecast projects a similar level of General Fund revenues in 2008-09 as the enacted budget package. In 2009-10, however, our forecast is nearly $8 billion lower—reflecting the recent negative news and the expectation of a likely delay in the state's recovery. Our forecast projects a year-over-year increase of only about $530 million. This small increase masks a significant drop in revenues which is offset by the additional $10 billion in new revenues that result from recently enacted tax increases. Figure 11 compares our forecast to the one assumed with the budget package (based on the Governor's budget estimates).

Longer-Term Outlook. After falling significantly in the current and budget years, our baseline revenue projections (that is, excluding the effects of the enacted tax changes) grow modestly in 2010-11 and 2011-12. As a result, our baseline revenue forecast for 2013-14 is more than $5 billion lower than our prior forecast in November—reflecting the generally weak long-term growth of the economy expected over the next five years.

Budget Will Need Work to Get Back Into Balance

Outlook for 2009-10

Spending Outlook. On the spending side of our forecast, we have some estimating differences with those included within the February package. On net, however, our projections of spending for 2008-09 and 2009-10 are similar to those of the enacted budget. For the purposes of our forecast, we assumed that the federal funds trigger level would not be reached. Consequently, our forecast includes the savings from the $948 million in spending reductions (and the $1.8 billion in additional revenues).

Shortfall of $6 Billion if No Further Action. The nearly $8 billion drop in 2009-10 revenues discussed above is the single most significant

Figure 11

Estimated Revenues: Comparison Between Budget Package and LAO

(In Millions)

	2008-09	2009-10
Budget package	$89,372	$97,729
LAO	89,358	89,892
Difference	**-$14**	**-$7,837**

factor in our revised projections in the near term. As a result of this revenue drop, we project that the state would end the 2009-10 fiscal year with a $6 billion deficit if no further corrective actions are taken (that is, the $8 billion revenue drop less the assumed $2 billion reserve). Whereas under the budget's assumptions, the state has a $5.5 billion operating *surplus*, the state would have nearly a $2.5 billion operating *shortfall* under our forecast.

Long-Term Outlook Remains Grim

Factors Limit Progress on Closing Future Shortfalls. There are a number of factors that would limit the state's progress in closing future shortfalls. For example, many of the solutions contained within the budget package are onetime or short term in nature. Among the key factors:

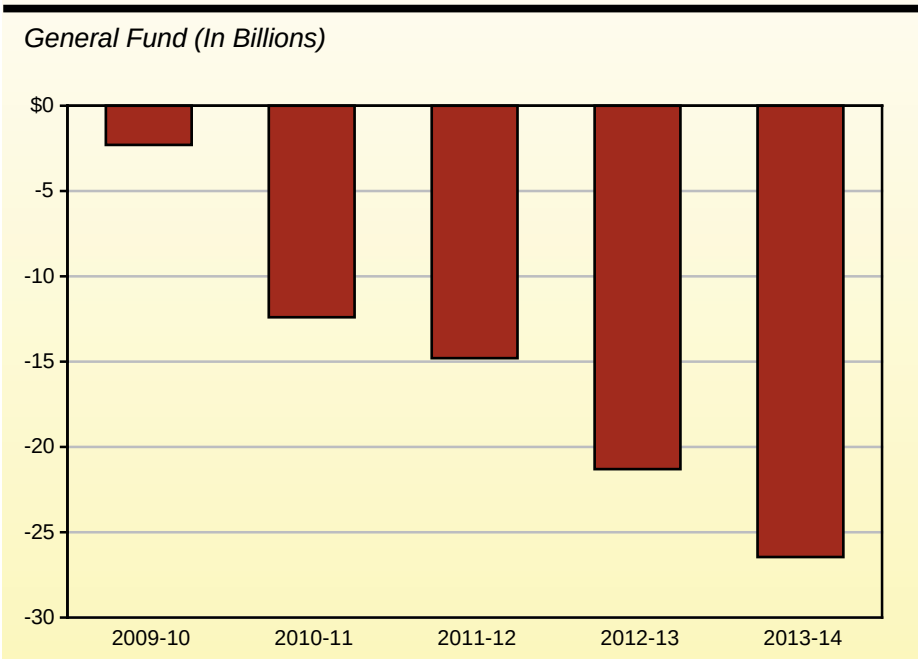
- Employee compensation savings would generally end after 2009-10.
- No additional borrowing of lottery profits is assumed after the initial $5 billion.
- Federal funds available to offset General Fund costs will drop significantly after 2009-10.

In addition, the state's recovery from the recession is expected to be relatively slow and modest—reducing the opportunity to grow out of the state's chronic operating shortfalls. Finally, the tax package is of a limited duration. Even if Proposition 1A is approved, the tax increases would begin to phase out after three years. Moreover, the single sales factor change affecting corporations described above would significantly reduce state revenues beginning in 2010-11.

Shortfalls of at Least $12 Billion Beginning in 2010-11. Under our updated estimates of the policies contained within the budget package (including passage of the ballot measures), we project that the state would face huge operating shortfalls from 2010-11 through 2013-14. Specifically, in 2010-11, we project that the state would face a shortfall of $12.6 billion. As shown in Figure 12, that shortfall would grow consistently in the following years—all the way to $26 billion by 2013-14. Given these

Figure 12

Operating Shortfalls Projected to Grow Dramatically Throughout Forecast Period



budgetary pressures, the state could experience recurring cash flow pressures in the coming months and years. This would particularly be the case if credit markets remain strained and restrict the state's access to borrowing for cash flow purposes.

Effect of the Special Election On the Budget Outlook

The six measures that will appear on the May special election ballot have major implications for the state's budget outlook in 2009-10 and in future years. In the materials that we prepared for the state voter information guide on the election, we provided our initial assessment of these measures' fiscal effects. Below, we discuss their effect relative to our new five-year forecast. The fiscal effects of some of the measures—particularly Proposition 1A and Proposition 1B—are sensitive to changes in the state's fiscal position. Their fiscal effect, therefore, could change significantly over time. Figure 13 summarizes the effects of all six measures through 2013-14 under our forecast.

Proposition 1A. Proposition 1A's fiscal effect over the next few years is the most uncertain of the six measures. Its specific effect would depend in large part on the decisions that the Legislature makes in balancing the large projected shortfalls in subsequent budgets. For instance, Proposition 1A restricts the withdrawal of funds from the Budget Stabilization Fund (BSF) in years when available revenues exceed the prior-year's spending grown for inflation and population. Consequently, the level of spending approved in one year will affect Proposition 1A's mechanics for the next year.

- ***Base Transfer.*** We have assumed that the Governor suspends the base transfer

Figure 13

Summary of Budget-Related Propositions Under LAO March Forecast[a]

Proposition	Topic	Effect on State General Fund Budgets	
		2009-10	Through 2013-14
1A	"Rainy day" reserve fund	Not significant	Higher tax revenues of $15 billion through 2012-13. Transfers to reserve assumed to be accessed by the General Fund.
1B	Supplemental payments for education	None	Higher annual costs of about $800 million by 2013-14.
1C	State Lottery	$5 billion in benefit from borrowing from future lottery profits	Net increased costs of about $400 million annually.
1D	Early childhood development program funds	Up to $608 million in savings	$268 million annually in savings from 2010-11 through 2013-14.
1E	Mental health program funds	About $230 million in savings	About $230 million in savings in 2010-11.
1F	State elected officials' salary increases	Potential minor reduction in costs	Potential minor reduction in costs in some years.

[a] In some cases, amounts differ from those included in voter information guide for the special election. Those estimates were based on earlier forecasts.

into the BSF in each year (as has been the case in recent years). While Proposition 1A makes this suspension more difficult than under current law, we have assumed—given the state's budget shortfalls—that the state would meet the criteria for such suspensions. Under the provisions of Proposition 1A, however, one-half of the transfers could not be suspended (as the funds would go to the supplemental education payments required under Proposition 1B).

- ***Ten-Year Revenue Trend.*** In addition, transfers would be made to the BSF based on amounts over the ten-year revenue trend. These transfers could not be suspended. Our best estimates based on our current revenue forecast is that this provision could become a factor in transferring funds to the BSF beginning in 2012-13. In particular, in 2013-14, the provision could require the transfer of billions of dollars to the BSF. As noted above, whether these funds could be transferred back to the General Fund to help balance the budget would depend on several factors. Our estimates assume that the full amounts could be transferred back to the General Fund in the same year that they are made. In contrast, if the provisions of Proposition 1A restricted the use of any funds in a particular year, that year's shortfall would be larger than under our projections.

- ***Extension of Tax Increases.*** If Proposition 1A passes, the rate increases adopted for the sales tax, VLF, and PIT would be extended by one to two years. These tax extensions would add a total of about $15 billion in revenues over our forecast period—with more than $10 billion of this amount in 2011-12.

Proposition 1B. Proposition 1B would eliminate any maintenance factor created in 2007-08 and 2008-09 under Proposition 98 and replace them with $9.3 billion in supplemental payments to be made beginning in 2011-12. Our forecast includes the first $4.4 billion of these payments by 2013-14. As described in our voter guide analysis, the fiscal effect of Proposition 1B depends in part upon one's baseline—how one reads the current provisions of Proposition 98. In our forecast and under our interpretation of current constitutional language, Proposition 1B (in conjunction with the passage of Proposition 1A) would result in K-14 education spending in 2013-14 that is about $800 million higher than would otherwise be the case.

Proposition 1C. Our forecast assumes that the state successfully sells $5 billion in lottery bonds in 2009-10. In subsequent years, however, the debt-service payments on these bonds would cost the state about $400 million annually.

Proposition 1D. By allowing the redirection of Proposition 10 funds, Proposition 1D would result in General Fund savings of about $600 million in 2009-10 and $268 million annually through 2013-14.

Proposition 1E. By allowing the redirection of Proposition 63 funds, Proposition 1E would generate a reduction in General Fund costs of about $230 million in each of 2009-10 and 2010-11.

Proposition 1F. If elected official salaries end up being lower under Proposition 1F than under current law, the state would generate minor savings.

CLOSING THE ADDITIONAL BUDGET GAP

In approving the budget in February, the Legislature and the Governor closed a huge budget gap. Unfortunately, the state's revenues continue to fall. As a first step to closing the additional gap that we identify, we recommend that the Legislature ensure that the state is maximizing the use of available federal funds. It will also need to use the spring to develop additional savings proposals.

Optimize Use of Federal Funds

As we laid out in our report on the federal economic stimulus funds (see page FED-14), the state's flexibility to use federal education dollars increases as the state's Proposition 98 minimum guarantee falls. Under our current projections, the minimum guarantee in 2009-10 will fall $3.6 billion below the level in the enacted budget. The state could reduce state spending by roughly this amount (spending must remain above the state's 2005-06 level of spending) by swapping out currently budgeted General Fund dollars for federal funds. While the specific amounts will depend on revised estimates developed in May, we recommend that the Legislature take this general approach for the Proposition 98 budget. This will generate roughly $3 billion in new budgetary solutions (the enacted budget had already counted on $510 million of offset) while preserving education programs at the level envisioned in the February package (as opposed to requiring additional reductions). By far, we believe this is the most significant step that the Legislature can take to optimize its use of federal funds in the context of this year's state budget. Some others are discussed in our recent report on the federal economic stimulus package. As the state learns more about federal guidelines and requirements, there will likely be additional opportunities for General Fund savings in other program areas.

While seeking to offset 2009-10 General Fund costs is the most immediate concern, the large budget shortfalls on the horizon require a strategic multiyear approach regarding the expenditure of the federal funds. The Legislature should seek to preserve as many federal dollars as possible to help balance the budget in future years—as opposed to committing them now for augmentations.

Continuing Work on More Solutions

The February budget package contained some of the most significant program reductions (particularly those tied to the federal funds trigger) that the state has implemented in recent years. Unfortunately, the further deterioration of the revenue outlook and the massive shortfalls on the horizon signal that the state's work is not done in this area. In January and early February, our office released a series of recommendations in our *2009-10 Budget Analysis Series*. A number of these recommendations (or similar proposals) were contained within the enacted budget package. We believe the remaining recommendations would be a good starting point for the Legislature to begin developing additional solutions. Our General Fund recommendations which remain viable are summarized in the Appendix and discussed below. In some cases, these recommendations will not generate immediate savings. Given the huge future shortfalls that we project over the next few years, the Legislature should actively pursue broad-based programmatic changes even if they take several years to generate any savings.

Proposition 98. In January, we laid out a series of options in case the minimum guarantee dropped further than initially anticipated. Adopting any of these options could allow the state to preserve more federal economic stimulus funds to help balance future budgets. In particular, our recommendation to begin raising community college fees makes even more sense than a few months ago. Recent changes to federal tax credits means that higher community college fees would allow the state to tap hundreds of millions of new federal dollars without a significant financial effect on students. In addition, undertaking reform of education mandates would reduce long-term liabilities and streamline state requirements.

Other Spending Programs. Many other recommendations that we made over the past few months to reduce spending remain viable. Some of the larger dollar savings would come from making further changes to health and social services programs and implementing a package of prison and parole changes.

Tax Gap and Tax Expenditures. The significant tax increases that the Legislature adopted in February make our office extremely reluctant to recommend that the state raise any more tax rates. Yet, the opportunity still exists to make targeted changes in tax expenditures. In addition, the Legislature can implement a number of administrative changes at the state's tax agencies that would generate additional revenues.

CONCLUSION

The state's declining revenue outlook means that the Legislature's work on the 2009-10 budget is not yet done. By using the spring budget process to ensure that the state maximizes its use of federal funds for budgetary relief and to develop new programmatic solutions, the Legislature will be in the best possible position to pass amendments to the enacted 2009-10 budget to bring it back into balance.

Appendix

2009-10 Budget Analysis Series: Summary of LAO Recommendations[a]

(In Millions)

Page	Department/Program	Recommendation	Savings
CJ-24	Corrections and Rehabilitation	Adopt alternative package of correctional population reduction proposals (savings level assumed implementation by March 1, 2009).	$400
CJ-27	Judicial Branch	Implement electronic court reporting.	13
CJ-27	Judicial Branch	Utilize competitive bidding for court security.	20
CJ-28	Justice	Require state and local agencies to pay for laboratory services.	—
CJ-29	Corrections and Rehabilitation	Use existing available funds from AB 900 to support certain capital outlay projects.	16
CJ-30	Corrections and Rehabilitation	Reject proposal to increase funding for correctional officer overtime.	—[b]
CJ-35	Corrections and Rehabilitation	Increase federal Workforce Investment Act funding for parolee employment programs. (Additional savings possible using newly available federal stimulus funding.)	7
CJ-37	Justice	Reject proposal to fund additional positions in Correctional Writs and Appeals section.	—[b]
ED-14	K-14 Education	Achieve savings based on updated revenue forecast while adhering to parameters of the federal Fiscal Stabilization Fund.	3,466
ED-27 ED-31	K-14 Education	Consolidate 42 K-12 programs into three block grants. Consolidate eight California Community Colleges (CCC) programs into two block grants.	—
ED-36	K-14 Education	Eliminate six of costliest K-12 mandates. Eliminate three of costliest CCC mandates.	—
ED-51	K-14 Education	Create one state cash disbursement system that is aligned with district expenditures.	—
GG-8	Employee Compensation	Reject bargaining agreements that secure cost savings now in exchange for substantial cost increases later.	—
GG-12	Tax agencies	Adjust various administrative changes, additional penalties and interest charges for non-compliance, user fees, and conform selective provisions of state law to federal law (net increased revenues).	81
GG-18	Franchise Tax Board (FTB)	Postpone Enterprise Data to Revenue project, but (1) approve resources to process backlog and (2) direct FTB to use existing electronically filed tax return schedules to increase tax revenues.	24
GG-23	Military	Reject funding for new Tuition Assistance Program for California National Guard.	—[b]
GG-23	California Emergency Management Agency	Reject preliminary plans for construction of replacement facility for the Southern Region Emergency Operations Center.	—[b]
GG-24	Military	Fund eight staff for mental health services with Proposition 63.	—[b]
GG-24	Secretary of State	Recommend funding state's share of costs of 2009 special election.	N/A
GG-41	Gambling Control Commission	Reform Special Distribution Fund local grants to target scarce resources better and protect the General Fund.	—

Continued

Page	Department/Program	Recommendation	Savings
HE-22	Health Care Services (DHCS)	Restructure skilled nursing home waiver agreement to include Medicare revenue.	$26
HE-22	DHCS	Create a more effective enforcement mechanism to collect overdue quality assurance fees from nursing homes.	10
HE-24	DHCS	Implement pilot program to evaluate the savings and service benefits of contracting with a broker for Medi-Cal nonemergency medical transportation.	—
HE-25	Public Health	Adopt cost-cutting measures for AIDS Drug Assistance Program.	—
HE-26	Public Health	Modify Proposition 99 accounts to increase flexibility.	—
HE-30	Developmental Services	Clearly define "cost-effective" services.	5
HE-32	Developmental Services	Implement regulations to govern regional center expenditures.	—
HE-34	Mental Health	Adjust state hospital caseload.	—
HED-20	University of California (UC)	Reject targeted enrollment increase for nursing.	—[b]
HED-20	UC	Reject targeted enrollment increase for PRIME.	—[b]
HED-20	California State University	Reject targeted enrollment increases for nursing.	—[b]
HED-20	Higher Education Segments	Provide enrollment guidance for next academic year.	—
HED-41	CSAC	Decentralize California Student Aid Commission (CSAC) Cal Grant award process.	—
HED-44	CSAC	Convert CSAC to department in executive branch.	—
HED-46	CPEC	Reject consolidation of California Postsecondary Education Commission (CPEC) into executive branch.	—
RES-18	Conservation Corps	Adopt Governor's proposal to eliminate Corps, but deny proposed grant program.	22
RES-19	CalFire	Enact new wildland fire protection fee.	Unspecified
RES-20	Fish and Game	Increase regulatory fees.	3
RES-21	State Water Board	Increase regulatory fees, including expanding fee base.	29
RES-22	Water Resources	Increase watermaster fees.	1
RES-22	OEHHA	Fund regulatory support activities from fees.	5
RES-24	CalFire	Adopt various General Fund program reductions and expenditure deferrals.	34
RES-43	Water Resources	Reduce CALFED General Fund base budget.	6
REV-25	PIT—Senior credit	Eliminate the extra personal income tax (PIT) credit provided to those 65 and older.	190
REV-25	PIT—Employer contribution for life insurance	Eliminate the exclusion of life insurance benefits from taxable income.	100

Continued

Page	Department/Program	Recommendation	Savings
REV-26	PIT—Employer-provided parking	Eliminate the exclusion of subsidized parking benefits from taxable income.	$100
REV-26	PIT—Small business stock exclusion	Eliminate the exclusion from taxable income of profits on certain sales of small business stock.	20
REV-26	PIT and Corporate—"Like kind" exchanges	Eliminate the exclusion from taxable income of profits from trading properties.	350
REV-27	PIT and Corporate—Enterprise zone subsidies	Cancel zones authorized in 2006 and phase out other zones as their designations expire.	100
REV-27	Sales—Animal life, feed, and seeds	Eliminate the exclusion for animal feed; seeds, plants, and fertilizers; drugs and medicines administered to animals; and medicated feed and drinking water.	465
REV-27	Sales—Industry-specific equipment	Eliminate the exclusion for timber harvesting, farming, and post-production equipment for television and films.	145
REV-28	Sales—Doctor and veterinarian sales	Eliminate the partial exclusion for glasses, contact lenses, drugs and medicines used by veterinarians, and other medical specialty items.	80
REV-28	Sales—Other exemptions	Eliminate the exemption for diesel fuel, custom computer programs, and leasing of films and tapes.	140
SS-16	Social Services	Pay counties to move certain state-only Cash Assistance Program for Immigrants (CAPI) recipients to federally funded Supplemental Security Income/State Supplementary Program (SSI/SSP).	17
SS-16	Social Services	Eliminate SSP restaurant meals allowance.	35
SS-16	Social Services	Eliminate CAPI prospectively.	20
SS-19	Social Services	Reduce In-Home Supportive Services (IHSS) share of cost (SOC) buyouts by 50 percent.	28
SS-19	Social Services	Cap IHSS SOC buyouts at determined level.	13
SS-20	Social Services	Adjust tiered reduction in IHSS domestic care hours.	36
SS-27	Social Services	Conduct self-sufficiency reviews and impose community service work requirement for "safety net" parents for CalWORKs (LAO version).	57
SS-29	Social Services	Create new kinship guardianship program in order to draw down more federal funds.	31
SS-31	Social Services	Increase fees and gradually increase investigation efforts in community care licensing.	4
SS-32	Social Services	Suspend "hold harmless" budgeting methodology for child welfare services.	10
SS-37	Child Support Services	Create matching program for local child support agencies.	4
SS-39	Social Services	Adopt various reforms to the Adoptions Assistance Program.	2
SS-40	Social Services	Increase oversight and accountability in IHSS by reforming time card practices.	—

[a] Assumes that cuts and tax increase tied to federal trigger remain in effect.

[b] "Without prejudice" issue. Savings from the recommendation already assumed in the budget package.

LAO Publications

This report was written by Michael Cohen with assistance from the entire office. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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Board of Behavioral Sciences

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Memo

To:	Policy and Advocacy Committee Members	**Date:**	March 25, 2009
From:	Tracy Rhine Legislation Analyst	**Telephone:**	(916) 574-7847
Subject:	**Legislation Update**		

BOARD-SPONSORED LEGISLATION

SB 33 (Correa) MFT Educational Requirements

This bill would have made a number of changes relating to the education requirements of Marriage and Family Therapists (MFTs), including:

- Permits MFT Interns to gain a portion of the required supervision via teleconferencing;
- Allows applicants to count experience for performing "client centered advocacy" activities toward licensure as a MFT;
- Requires applicants for MFT licensure to submit W-2 forms and verification of volunteer employment for each setting in which the applicant gained experience;
- Increases the graduate degree's total unit requirement from 48 to 60 semester units (72 to 90 quarter units);
- Increases the practicum by three semester units and 75 face-to-face counseling and client centered advocacy hours;
- Provides more flexibility in the degree program by requiring fewer specific hours or units for particular coursework, allowing for innovation in curriculum design; and,
- Deletes the requirement that an applicant licensed as an MFT for less than two years in another state to complete 250 hours of experience in California as an intern prior to applying for licensure.
-

SB 819 (Committee on Business, Professions and Economic Development) - Board Omnibus Bill

This proposal will incorporate all the following changes approved by the Board and included in SB 1779 last year:

- *Enforcement*
  Prohibits the board from publishing on the internet for more than five years the final

determination of a citation and fine of one thousand five hundred dollars ($1,500) or less against a registrant or licensee.

- *Marriage and Family Therapist Act Title*
  Adds the following title to Chapter 13 of Division 2 of the Business and Professions Code: "This chapter shall be known, and may be cited, as the Marriage and Family Therapist Act."

- *Out-of-State Licensed Clinical Social Worker (LCSW) Eligibility*
  Makes a technical change to language relating to eligibility for out of state LCSW applicants that clarifies that an applicant must currently hold a valid license from another state at the time of application.

- *MFT Experience Requirements*
  Clarifies that no hours of experience gained more than six years prior to the date of application for MFT *examination eligibility* can be counted towards the experience requirements.

- *Unprofessional Conduct*
  Adds to the provisions of unprofessional conduct for all licensees the act of subverting or attempting to subvert any licensing examination or the administration of an examination.

    - Deletes the following language from the unprofessional conduct statutes: *Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances or any combination thereof*.

    - Adds to the unprofessional conduct statute for LEP's failure to comply with telemedicine statute.

- *Associate Clinical Social Worker (ASW) Supervision*
  Permits ASWs to gain up to 30 hours of direct supervisor contact via videoconferencing and allows group supervision to be provided in one-hour increments, as long as both increments (full two hours) are provided in the same week as the experience claimed.

- *Miscellaneous Provisions*
  Repeals code sections containing obsolete language

SB 821 (Committee on Business, Professions and Economic Development) - Board Omnibus Bill

A second omnibus bill will be introduced by the Senate Business, Professions and Economic Development Committee that will include the following statutory changes approved by the Board at its November 18, 2009 meeting:

- *Supervision in Private Practice*
  Limits the number of MFT Interns and ASWs that may work under the supervision of a licensed professional in private practice to two total registrants, irrespective of registrant type, at one time.

- *ASW Employment in Private Practice*
  Prohibits an ASW issued a subsequent registration from being employed or volunteering in a private practice setting.

- *Leasing or Renting Space by an ASW*

  Prohibits an ASW from leasing or renting space, paying for furnishings, equipment or supplies, or in any other way paying for the obligations of their employers.

- *Reinstatement or Modification of Penalty for Registrants*

  Adds a reference to clarify that registrants may petition for reinstatement or modification of penalty when his or her registration has been revoked or suspended or been placed on probation.

- *Unprofessional Conduct of a Supervisor*

  Clarifies that unprofessional conduct includes any conduct in the supervision of a registrant by any licensee that violates licensing law and regulations adopted by the board, irrespective of the field of practice of the supervisee and the supervisor.

- *Record Retention*

  Adds record retention provisions to Licensed Educational Psychologist (LEP) and LCSW licensing law that do the following:

  - Prohibits the board from denying an applicant admission to the written examination or delaying the examination solely upon receipt by the board of a complaint alleging acts that would constitute grounds for denying licensure.

  - Requires the board to allow an applicant that has passed the written examination to take the clinical vignette examination regardless of a complaint that is under investigation. This same provision would allow the board to withhold results of the examination pending completion of the investigation.

  - Allows the board to deny an applicant that previously failed either the written or clinical vignette examination permission to retest pending completion of an investigation of complaints against the applicant.

  - Provides that no applicant shall be eligible to participate in a clinical vignette examination if his or her passing score on the standard written examination occurred more than seven years ago.

- *Miscellaneous Provision*

  Deletes incorrect reference to an “annual” license renewal.

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Board of Behavioral Sciences

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Memo

To:	Policy and Advocacy Committee Members	**Date:**	March 25, 2009
From:	Tracy Rhine Legislative Analyst	**Telephone:**	(916) 574-7847
Subject:	**Rulemaking Update**		

PENDING REGULATORY PROPOSALS

Title 16, CCR Section 1887.2, Exceptions to Continuing Education Requirements

This regulation sets forth continuing education (CE) exception criteria for MFT and LCSW license renewals. This proposal would amend the language in order to clarify and better facilitate the request for exception from the CE requirement. **The board approved the originally proposed text at its meeting on May 31, 2007. This proposed regulation was incorporated into the rulemaking package relating to continuing education requirements for Licensed Educational Psychologist.**

Title 16, CCR Sections 1887, 1887.2, 1887.3, and 1887.7, Minor Clean-Up of Continuing Education Regulations

This proposal would make minor clean-up amendments to continuing education regulations. **The Board approved the originally proposed text at its meeting on May 31, 2007. This proposed regulation will be incorporated into the rulemaking package relating to continuing education requirements for Licensed Educational Psychologist.**

Title 16, CCR Sections 1815 and 1886.40, Fingerprint Submission Requirements

This proposal will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the Department of Justice (DOJ) criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ. **The Board approved the originally proposed text at its meeting on December 19, 2009. The Notice of Proposed Changes in Regulation was published in the California Regulatory Notice Register on January 2, 2009. The final rulemaking package was approved by the Board at its February 26, 2009 Board meeting. This package is awaiting approval by Department of Finance.**

Title 16, CCR Section 1888, Revision of Disciplinary Guidelines

This proposal will revise the Disciplinary Guidelines set forth by the Board and utilized in a disciplinary action against a licensee under the Administrative Procedures Act. **The Board approved the originally proposed text at its meeting on November 18, 2009. The Notice of Proposed Changes in Regulation was published in the California Regulatory Notice Register on January 2, 2009. The final rulemaking package was approved by the Board at its February 26, 2009 Board meeting. This package is awaiting approval by the Department of Consumer Affairs.**

Title 16, CCR Section 1811, Revision of Advertising Regulations

This proposal revises the regulatory provisions related to advertising by Board Licensees. **The Board approved the originally proposed text at its meeting on November 18, 2009. Staff is currently preparing the rulemaking package for Notice with the Office of Administrative Law.**